TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 180.

JAMES S. WILKINS, PLAINTIFF IN ERROR,

vs.

SEMPLE ELLETT, ADMINISTRATOR OF T. N. QUARLES, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED FEBRUARY 7, 1880.

SUPREME COURT OF THE UNITED STATES

No. 180.

JAMES S. WILKINS, PLAINTIFF IN ERROR,

vs.

SEMPLE ELLETT, ADMINISTRATOR OF T. N. QUARLES, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Caption	1	1
Summons	1	1
Bond for costs	2	1
Return to summons	2	1
Declaration	3	2
Order amending declaration	7	3
Pleas of defendant	8	4
Replication	11	5
Motion for new trial denied	14	6
Order granting leave to substitute printed record, &c.	15	6
Trial	16	7
Mistrial	18	7
Trial	19	8
Order granting leave to amend declaration, &c	24	9
Verdict and judgment	26	10
Supersedeas bond approved	28	10
Bill of exceptions	29	11
Bond and letters of administration	29	11
Account of T. N. Quarles from ledger of F. H. Clarke & Co	32	12
Exhibit C (letter)	43	20
D (letter)	44	20
E (letter)	45	20
F (letter)	47	21
G (letter)	49	22
M (letter)	50	23
N (letter)	51	23
A (letter)	52	24
O (letter)	55	25

	Original.	Print.
Exhibit P (letter)	60	27
Q (letter)	62	28
Interrogatories	64	29
Cross-interrogatories	68	30
Deposition of Sally Puryear	70	31
Thomas C. Ellett	74	32
Interrogatories	81	35
Cross-interrogatories	86	37
Deposition of A. R. Holladay	88	37
Semple Ellett	90	38
Mrs. W. A. Bates	98	41
Evalina F. Holman	100	42
John Ellett	104	43
R. T. Ellett	112	46
Edmonia J. McNeal	120	49
Interrogatories	134	54
Deposition of A. J. Sykes	139	56
C. C. Swoope	141	57
R. W. Gibson	143	57
E. H. Foster	145	58
A. G. Owen	147	59
Mrs. J. M. White	150	59
E. A. White	151	60
Stipulation as to entries on State and county tax books, 1858, 1860, 1861, and 1862, &c	153	60
Deposition of William Goodloe	154	61
Letters of administration to William Goodloe	157	62
Inventory	158	63
Testimony of James S. Wilkins	163	66
E. Neiderer	167	67
A. Brook	169	68
A. Afflick	170	68
Instructions asked by defendant and exceptions	172	69
Exceptions to charge of the court	183	73
Charge of the court	203	79
Instructions asked by plaintiff	219	85
Bill of exceptions signed	231	88
Bond	231	88
Writ of error	233	89
Citation	235	90
Clerk's certificate	237	90

1 No. 1145.

UNITED STATES OF AMERICA:

Circuit court of the United States, sixth judicial circuit, western district of Tennessee.

Proceedings had in the circuit court of the United States, for the sixth judicial circuit thereof, in the western district of Tennessee, at a regular term of said court, begun and held for the November term, A. D. 1878, at the Federal court rooms, in the city of Memphis, on, to wit, the day of 1879, and days previous and subsequent thereto in the following case:

SEMPLE ELLET, ADMINISTRATOR OF THOMAS U. Quarles, deceased,
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co.
} No. 1145. Law docket.

The President of the United States of America to the marshal of the district of West Tennessee, greeting:

You are hereby commanded to summons James S. Wilkins, surviving partner of the firm of F. H. Clark & Company, a citizen of the State of Tennessee, if he be found within your district, to appear before the judge of the circuit court of the United States, in the sixth circuit for the district of West Tennessee, at Memphis, on the first Monday of September next, and then and there to answer Semple Ellet, administrator
2 of the estate of Thomas N. Quarles, dec's'd, of a plea of trespass on the case upon promises. Herein fail not, & have you then & there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year 1866, and of the Independence of the United States the 90th.

[SEAL.] A. S. MITCHELL, *Clk.*
ISAAC MORRISON,
D. C. of said Court.

Know all men by these presents, that Marland L. Perkins is held and firmly bound unto William Wilkins in the sum of two hundred & fifty doll's; to be void on condition that Semple Ellet, adm'r, &c., pay & satisfy all costs that may accrue in his behalf in prosecution of a suit in circuit court of United States in district of West Tennessee, at Memphis, against Wm. Wilkins, sur'g partner of F. H. Clark & Co., on failure to prosecute his suit with effect, & on failure of def't to pay said costs.

Witness my hand & seal this 7th June, 1866.

MARLAND L. PERKINS.

Return of summons.

3 Came to hand same day as issued, and executed on James S. Wilkins, by making known the contents of the within, and leaving him a copy of the declaration.

M. T. RYDER,
Marshall.

And upon the said 7th day of June, A. D. 1866, the plaintiff filed his declaration in said cause in the words following, to wit:

In the circuit court of the U. States, sixth judicial circuit.—September term, 1866.

UNITED STATES OF AMERICA,
District of West Tennessee:

SEMPLE ELLETT, ADMINISTRATOR OF THE ESTATE of Thos. N. Quarles, dec'd,
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF THE firm of F. H. Clark & Co.

Semple Ellett, who is a citizen of the State of Virginia, and administrator of all and singular the goods, and chattels, and credits which were of Thomas N. Quarles, at the time of his death, who died intestate, complains of James S. Wilkins, who is a citizen of the State of Tenn., and surviving partner of the firm of F. H. Clark & Company, of a plea of trespass on the case upon promises. For that whereas heretofore, to wit, on the 6th day of June, A. D. 1866, at Memphis, to wit, at the district aforesaid, the said defendant and F. H. Clark, in his life-time, now deceased, and whom
4 the said defendant hath survived, become and were indebted to Thomas N. Quarles, his life-time, in the sum of five thousand dollars for the work and labor, care and diligence of the said Thomas N. Quarles, in his life-time, before that time done, performed, and bestowed in and about the business of said defendant and F. H. Clark, and for the said defendant and F. H. Clark, and at their special instance and request; and also in the like sum for divers goods, wares, and merchandise, by the said Thomas N. Quarles, in his life-time, before that time sold and delivered to the said defendant and F. H. Clark, at their special instance and request; and also in the further sum of five thousand dollars for money by the said Thomas N. Quarles, in his life-time, before that time, lent and advanced to and paid, laid out, and expended for the said defendant and F. H. Clark; and also in the like sum for other money by the said defendant and F. H. Clark had and received to and for the use of the said Thomas N. Quarles, and being so indebted, the said defendant and F. H. Clark, in his life-time, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised said Thomas N. Quarles, in his lifet-ime, to pay him the said several
5 sums of money when they should be thereunto afterwards requested. Yet the said defendant and F. H. Clarke, in his life-time, not re-

garding their several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said Thomas N. Quarles, in his life-time, and the said plaintiff (as administrator as aforesaid), after the death of said Thomas N. Quarles, to which the said plaintiff, after the death of said Thomas N. Quarles, to wit, on the 5th day of June, 1866, at the district aforesaid, administrator of all & singular the goods and chattels and credits which were of the said Thos. N. Quarles, deceased, at the time of his death, who died intestate, in due form of law, was granted in this behalf, hath not as yet paid the s'd sums of money, or any part thereof, to the said Thomas N. Quarles in his life-time, or to the said plaintiff, administrator as aforesaid, since the death of the said Thomas N. Quarles, although often requested so to do; and whereas also the said defendant and F. H. Clark afterwards, and in the life-time of the said F. H. Clark, now deceased, to wit, on the day and year aforesaid, at the district aforesaid, became and were indebted in the further
6 sum of five thousand dollars by account, and in like sum for money loaned by the said Thomas N. Quarles, in his life-time, to the said defendant and F. H. Clark, and in like sum for goods, wares, and merchandise sold by the said Thomas N. Quarles, in his life-time, to said defendant and F. H. Clark, and in like sum for money paid by the said Quarles, in his life-time, to said defend*ed*ant and F. H. Clark, and being so indebted, and the said several sums of money in this court mentioned, being and remaining wholly due and owing, unpaid and unsatisfied he, the said defendant, in consideration thereof, afterwards, and after the death of the said F. H. Clark, undertook, and then and there faithfully promised the said Thomas N. Quarles, in his life-time, to pay him the said sums of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested; nevertheless, although often requested, the said defendant hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof to the said Thomas N. Quarles, in his life-time, or since his death, to the said plaintiff as administrator as aforesaid, to his damage five thousand dollars; and therefore he
7 brings his suit, &c.; and the said plaintiff brings into court here the letters of administration, which give sufficient evidence to the said court here of the grant of administration to the said plaintiff as aforesaid, the date whereof is the day and year in that behalf above mentioned.

McRAE & PERKINS,
Plaintiff's Att'ys.

And thereupon, afterwards, to wit, at the September term, 1866, of said court, and upon the 10th day of said month, the following order was made in said cause, to wit:

SEMPLE ELLETT, ADMINISTRATOR OF THOMAS N. Quarles, dec'd.
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co.
} Assumpsit.

This day came the parties, by their attorneys, and thereupon the plaintiff asked leave to amend his declaration in this cause by striking out the

name of William Wilkins, who was named therein as defendant, and inserting instead thereof the name of James S. Wilkins, on whom the summons had been served, which leave was granted and said amendment made.

8 *Pleas of defendant.—Filed Sept'r 14th*, 1866.

Circuit court for the district of West Tennessee, in sixth circuit, at Memphis. Sept. term, 1866.

SEMPLE ELLETT, ADM'R, &C., *vs.* JAMES S. WILKINS. } Pleas of defendant.

And the defendant, by attorney comes, and for plea to the several counts in the plaintiff's declaration contained, says that the defendant did not promise in manner & form as the plaintiff in his said several counts has complained, and of this he puts himself upon the country.

And the defendant, for further plea, says that said Quarles, at the time of his decease, had his domicil at Courtland, county of Lawrence, & State of Alabama, and after the decease of said Quarles, & long before the appointment of the plaintiff as administrator, &c., as alleged in his declaration, one William Goodloe, who, at the time of the decease of said Quarles, & ever since, has been an inhabitant of the said town of Courtland, in the s'd county, and State of Alabama, was duly and according to the
9 laws of said State, appointed adm'r of all and singular the goods and chattels, credits, & estate of said Quarles by the probate court then & there presiding, having the power of granting administration on the estate of persons deceased, intestate within and for the town of Courtland, the county of Lawrence, in said State of Alabama, & letters of administration on the estate of said decendent were then and there, by said probate court, granted to said Goodloe, who accepted said trust and then and there, by his administrator's bond to said probate court, became bound to make and exhibit to the said probate court a true and perfect inventory of all and singular the goods & chattels, credits and estate of said deceased, and also to render a true and plain account of his administration of said estate according to the laws of the said State of Alabama; and the said Goodloe did return & exhibit into the said court for the said district of Courtland a true inventory of all the cho'es in action on which moneys were
10 due to said deceased, and of all the money which appertained to him at the time of his death, in which said inventory so exhibited as aforesaid are stated and mentioned, all the sums of money due, as claimed & alleged in the plaintiff's declaration aforesaid, from defendant to the said Quarles at the time of his decease; and the defendant avers that afterwards and before the obtaining of letters of administration by plaintiff, as shown in his declaration, and before the beginning of this suit, he, the said defendant, at the special instance and request of the said Goodloe as adm'r as aforesaid, did pay to the said *said* Goodloe, as such adm'r, the full sum claimed in the declaration aforesaid, & took from him, as such adm'r, a receipt in full for said sums; and the defendant avers that the said Goodloe afterwards and before the commencement of this suit, and before the obtaining of letters of adm'r by pl'f, as alleged

in his declaration, did make a final settlement of his administration of said estate with and in said probate court, and did account for, truly & correctly, the sums so received from defendant and paid over the same to the persons & purposes entitled; and defendant avers that there were and
11 are no creditors of said estate of said Quarles in this State, and this he is ready to verify. Wherefore, &c.

HUMES, POSTON & SCOTT,
Att's for Def't.

Replication of plaintiff.—Filed March 6th, 1867.

In the circuit court of the United States, sixth judicial circuit. Septemterm, 1866.

SEMPLE ELLETT, ADM'R, &C., }
vs. }
JAMES S. WILKINS. }

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, and whereof he has put himself upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendant, by him secondly above pleaded, saith that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he, the said plaintiff, saith that said Quarles, at the time of his *discease*, did not have his domicil at Courtland, county of Lawrence & State of Alabama; that said Wm. Goodloe was not, at
12 the time of the decease of said Quarles, nor has he since been, an inhabitant of the said town of Courtland, in the said county, and State of Alabama; that said Goodloe was not in manner & form, as is by the said defendant in his said second plea alleged, appointed administrator of all and singular the goods & chattels, credits and estate of said Quarles; that letters of administration were not granted to said Goodloe in manner & form as alleged in said second plea; that said Goodloe did not return & exhibit into the said court, for the said district of Courtland, a true inventory of all the choses in action on which monies were due to said deceased, and of all the money which appertained to him at the time of his death; that he, the said defendant, did not, in manner and form as alleged in said second plea, pay to said Goodloe the full sums mentioned and claimed in the declaration aforesaid, nor did he take from said Goodloe a receipt in full for said sums; that said Goodloe did not, in manner & form as is by second plea alleged, make a final settlement of his adminis-
13 tration of said estate with and in said probate court; that there were and are creditors of said Quarles in this estate, & of this he puts himself upon the country.

McRAE, PERKINS & WALKER.
Plaintiff's Att'ys.

14 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1867, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 17th day of April, A. D. 1868, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOMAS N. QUARLES, dec., plaintiff,
vs.
JAMES S. WILKINS, SUR. PART. OF F. H. CLARK, & Co., defendant.
} No. 107. Assumpsit.

This day came on to be heard the defendant's motion for a new trial entered herein at the last term of this court; and the same being argued by counsel and fully understood by the court, it is ordered by the court that said motion be overruled; and thereupon the defendant tendered his bill of exceptions, and asked that the same be signed and sealed and made a part of the record in this cause; which was accordingly done.

15 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1867, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 23d day of Jan'y, A. D. 1877, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOMAS N. QUARLES, dec'd, plaintiff,
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co., defendant.
} Law docket. No. 1145.

In this cause the parties are permitted to file the printed transcrip' of the record in this case from the supreme court to supply the record of summons, proceedings, & proofs lost in this case, and the same is done and substituted for said lost record.

16 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1867, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 13th day of Feb'y, A. D. 1878, in the following cause, to wit:

SEMPLE ELLETT, ADMINISTRATOR, &C., PLAINTIFF,
vs.
JAMES S. WILKINS, SURVIVING PARTNER, &C., DEFENDANT.
} Law docket. No. 1145.

In this cause, before the honorable John Baxter, circuit judge, presiding, came the parties by their respective counsel, and on motion came a jury of good and lawful men, to wit, J. H. Edmondson, John O'Connor, W. C. Woodruff, G. B. Morton, D. F. Goodyear, J. A. Prestwood, L. Falkenburg, Wm. B. Weisiger, J. H. Freleigh, J. G. Barbour, J. C. Anderson, and J. H. Goodlett, who were duly elected, tried, and sworn well and truly to try the issues herein joined between the plaintiff and the defendant, and a true verdict render; and thereupon the trial of said cause
17 was commenced; and the jury aforesaid having heard the testimony, listened to the arguments of counsel, and received the charge of the court as to the law of the case, retired to consider of their verdict herein, and not having agreed upon the same, it is ordered by the court that said jury be excused from further consideration of the same until to-morrow morning at ten o'clock.

18 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 14th day of Feb., A. D. 1878, in the following cause, to wit:

SEMPLE ELLETT, PLAINTIFF,
vs.
JAMES S. WILKINS, DEFENDANT.
} No. 1145.

Came again the parties, by their attorneys, and came also the jury heretofore empannelled in this cause, and thereupon the said jury retired to consider of their verdict herein, and having reported to the court that they are unable to agree upon a verdict the court orders that a mistrial be entered therein.

19 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial cricuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 21st day of Feb'y, A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOS. N. QUARLES, dec., plaintiff,
vs.
JAMES S. WILKINS, DEFENDANT. } No. 1145.

In this cause came the parties, by their attorneys, and on motion it is ordered that a jury do come, and thereupon came a jury of good and lawful men, to wit, Joseph H. Morton, James M. Reavis, Hosea Jackson, G. S. Jordan, A. Walbrecht, W. H. Horton, Patrick Meagher, J. N. Jones, A. S. Brown, A. W. Hannd, Josiah Dickson, and Godfrey Salem, who, being duly elected, tried, and sworn well and truly to try the issues herein joined, and a true verdict render according to the evidence, and there-
20 upon the trial of said cause was commenced; and there not being sufficient time to conclude the same on to-day, it is ordered that the said trial be continued till Monday morning next at ten o'clock.

21 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 24th day of Feb., A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOMAS N. QUARLES, dec'd, plaintiff,
vs.
JAMES S. WILKINS, DEFENDANT. } No. 1145.

The further hearing of this cause is continued till to-morrow morning, at ten o'clock.

22 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 25th day of Feb'y, A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOS. N. QUARLES, dec'd, plaintiff,
vs.
JAMES S. WILKINS, DEFENDANT. } No. 1145.

The further hearing of this cause is continued till to-morrow morning at ten o'clock.

23 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 26th day of Feb., A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOMAS N. QUARLES, dec'd, plaintiff,
vs.
JAMES S. WILKINS, DEFENDANT. } No. 1145.

The further hearing of this cause is continued till to-morrow morning at ten o'clock.

24 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 27th day of Feb., A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R, PLAINTIFF,
vs.
JAMES S. WILKINS, SURVIVING PARTNER, &C., defendant. } No. 1145.

The former orders requiring plaintiff to give a new cost bond, and or-

dering the dismissal of the cause on his failure to give such bond, are set aside and vacated, the plaintiff having complied with the same by filing a satisfactory bond. And, upon application of the plaintiff, it is ordered that the declaration be and stand amended so as to fix the amount claimed by the plaintiff in each of the several counts thereof at the sum of
25 ten thousand instead of five thousand dollars; to which order the defendant objected and excepted in law at the time the same was presented, during the argument before the court and jury.

26 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house in the city of Memphis, in said district, on, to wit, the 27th day of Feb'y, A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R, PLAINTIFF,
vs.
JAMES S. WILKINS, SURVIVING PARTNER, &C., defendant. } No. 1145.

In this cause came again the parties, by their attorneys, and came also the jury heretofore empannelled, who, having heard the evidence, listened to the arguments of counsel, and received the charge of the court, retired to consider of their verdict, and returned into court the following verdict: "We, the jury, find for the plaintiff the amount claimed, with 6 per cent. interest from January, 1866, to present time, to wit, the sum of six
27 thousand one hundred and eighty-two $\frac{95}{100}$ ($6,182.95) dollars, principal and interest." It is therefore considered by the court that the plaintiff do have and recover of and from the said defendant, James S. Wilkins, the amount of said verdict, to wit, the sum of six thousand one hundred and eighty-two $\frac{95}{100}$ ($6,182.95) dollars, and the costs of the suit; for which let execution issue.

28 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof, begun and held for its November term, A. D. 1867, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 20th day of May, A. D. 1879, in the following cause, to wit:

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec'd, plaintiff,
vs.
J. S. WILKINS, DEFENDANT. } No. 1145.

This day came the defendant and tendered his supersedeas bond in the

penalty of $12,365.90, conditioned as required by law for a supersedeas bond, and with W. S. Bruce as surety, and the court having examined said Bruce under oath as to his solvency and sufficiency as such surety, and being satisfied therewith, orders that said Bruce be accepted as a good and sufficient supersedeas bond on the writ of error prosecuted by said Wilkins from the judgment in this cause.

29 BILL OF EXCEPTIONS.

SEMPLE ELLETT, ADM'R OF T. N. QUARLES
vs.
J. S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co. } No. 1145. Law docket.

Circuit court of the United States for the western district of Tennessee.

Be it remembered that on the day of March, 1879, this cause came on to be heard before Hon. E. S. Hammond, judge of the district courts of the United States for the eastern & western districts of West Tennessee, presiding in the circuit court of the United States for the sixth judicial circuit, at Memphis, Tennessee, when the following proceedings, orders, judgements, were had, rendered, and taken, to wit:

The plaintiff read his letters of administration from the county court of Shelby County, in the State of Tennessee, as follows:

30 SEMPLE ELLETT, ADMINISTRATOR OF THOMAS N. QUARLES, DECEASED. } County court, June term, 1866.

Administrator's bond.

STATE OF TENNESSEE,
Shelby County:

We, Semple Ellett, Edmond M. Apperson, and G. V. Rambant, are bound to the State of Tennessee in the sum of eight thousand dollars. Witness our hands and seals this 4th day of June, 1866.

The condition of this obligation is such that whereas the above bound Semple Ellett has been appointed administrator of Thomas N. Quarles, deceased:

Now, if the sa'd Semple Ellett shall well and truly perform and discharge all the duties and obligations which are or may be required of him by law to be performed and discharged as such administrator, then this obligation shall be void; otherwise to be and remain in full force and virtue.

SEMPLE ELLETT. [SEAL.]
EDMUND M. APPERSON, [SEAL.]
By M. L. PERKINS, *His Att'y in Fact.*
G. V. RAMBANT, [SEAL.]
By M. L. PERKINS, *His Att'y in Fact.*

Witness:
JNO. LOAGUE, *Cl'k,*
By J. WEAVER, *D. C.*

Approved by the court, June term, 1866.
THOMAS LEONARD, *Judge.*

31 *Letters of administration.*

STATE OF TENNESSEE,
Shelby County:

To Semple Ellett, a citizen of said county:

It appearing to the county court, now in session, that Thomas N. Quarles has died, leaving no will, and the court being satisfied as to your claim to the administration, and you having given bond and qualified as directed by law, and the court having ordered that letters of administration be issued to you:

These are therefore to authorize and impower you to take into your possession and control all the goods, chattles, claims, and papers of the said intestate, and return a true inventory thereof to our next county court, to collect and pay all debts, and to do and transact all the duties in relation to said estate which lawfully devolves upon you as administrator, and after having settled up said estate to deliver the residue thereof to those who are entitled by law.

Witness Jno. Loague, clerk of said court, at office, this 4th June, 1866, and 90th of American Independence.

JNO. LOAGUE, *Clk*,
By J. WEAVER, *D. C.*

STATE OF TENNESSEE,
Shelby County:

32 I, John Loague, clerk of the county court of said county, certify that the within is a correct copy from the records on file in my office.

Given under my hand & seal this 11th Sept., 1866.

JNO. LOAGUE, *Clk*,
By J. WEAVER, *D. C.*

Plaintiff then introduced without objection the ledger of F. H. Clarke & Co., and read to the jury the account of Thomas N. Quarles, as follows:

33 T. N. C. QUARLES.

1856.							
Oct.	27	To cash, 8.00	8 00			Commenced Oct. 6th, 1856, at 900 per annum.	
Nov.	6	3.00; 8, board, 20	23 00				
	15	13.00; Dec'r 8, " 20	33 00	July	1	By service to date, 8 months & 24 days	440 08
Dec.	10	11.00; 18, 7.50	18 50				
	22	2.00	2 00				
	24	Merchandise	6 25				
	31	To cash, board	20 00				
1857.							
Jan'y	2	To cash, 7.00; 16, 3.00	10 00				
	17	" " 2.00; 27, 1.00	3 00				
	30	" " 2.00	2 00				
Feb'y	2	" " 21.00; 14, 5.00	26 00				
	18	2.00	2 00				
Mar.	2	7.00; 5, 20.00	27 00				
	14	" 15.00; 18, 10.00	25 00				
	26	Double B razor	2 00				
	27	To cash, 20.00; 31, 10.00	30 00				
April	1	" " 2.00; 10, 6.00	8 00				
	15	" " 3.00; 18, 2.00	5 00				
	30	"	5 00				
May	2	" 30.00	30 00				
	22	1 portemonnie	25				
	"	To cash, 50.00; 15, 10.00	60 00				
July	1	" " 17.00	17 00				
			363 00				
		To balance	77 08				
			440 08				440 08
				1857.			
June	20	Keller & Johnson's bill	6 00	July	1	By balance	77 08

T. N. C. QUARLES—Continued.

1856.						
July 8	To cash, 15.00	15 00	Aug. 1	" services, one month	50 00	
" 15	" " 3.00; 22, 5.00	8 00				
	" balance	98 08				
		127 08				127 08
Aug. 1	" cash	5 00	Aug. 1	By balance	98 08	
" 6	" " 16.00; 12, 5.00	21 00	Sep. 17	" services to date	78 34	
" 20	" 5.00; 30.00	35 00				
Sep. 17	" 5.00	5 00				
	To balance	110 42				
		176 42				176 42
	To balance	132 08	Sep. 17	By balance	110 42	
			Oct. 1	" services to date	21 66	
		132 08				132 08
Oct. 10	To cash, 2.00; 16, 15.00	17 00	Oct. 1	By balance	132 08	
	" balance forward	165 08	Nov. 1	" services, one month	50 00	
		182 08				182 08

34 T. N. C. QUARLES.

1857.			1857.			
Nov. 5	To cash, 21.00; 20, 10.00	31 00		By am't from 33	165 08	
" 24	" " 25.00	25 00	Dec'r 1	" one month's services	50 00	
"	" balance	159 08				
		215 08				215 08
Dec. 1	To cash, 20.00; 5, 4.00; 19, 25.09	49 00	Dec. 1	By balance	159 08	
" 25	" 5.00	5 00	Jan'y 1	" one month's services	50 00	
	" balance	155 08				
		209 08				209 08
1858.			1858.			
Jan'y 1	To cash, 5.00; 1, 5.00; 20, 25.00	35 00	Jan'y 1	By balance	155 08	
	" balance	219 08		" over am't from Oct., at 720 per annum	39 00	
			Feb'y 1	By one month's services	60 00	
		254 08				254 08
Feb'y 15	To cash, 5.00; 20, 20.00	25 00	Feb'y 1	By balance	219 08	
	" balance	244 08	Mar. 1	" one month's services	50 00	
		269 08				269 08
Mar. 11	To cash, 15.00; 20, 20.00; 23, 8.00	43 00	" 1	By balance	244 08	
	" balance	271 08	April 1	" one month's services	60	
				" error of ten dollars, last month's	10	
		314 08				314 08
Ap. 1	To cash, 10.00; 15, 25.00	35 00	April 1	By balance	271 08	
" 23	" " 5.00	5 00			60 00	
	" balance	291 08				
		331 08				331 08
May 6	To cash, 20.00; 15, 10.00	30 00	May 1	By balance	291 08	
	" balance	321 08	June 1	" services	60 00	
		351 08				351 08
June 5	To cash, 25.00; 25, 35.00	60 00	June 1	By balance	321 08	
" 26	" "	100 00	" 26	" services to date	52 00	
	" balance	213 08				
		373 08				373 08
July 5	To cash, board	11 00	June 26	By balance	213 08	
	" balance	272 08	July 26	" one month's services	60 00	
			Sep. 1	" 5 days' "	10 00	
		283 08				283 08

T. N. C. QUARLES—Continued.

1857.					
Sep. 1	To cash, 15.00; 20, 20.00	35 00	Sep't 1	By balance	272 08
"	" balance forward	297 08	Oct. 1	" one month's services	60 00
		332 08			332 08

35 T. N. C. QUARLES.

1858.			1858.		
Oct. 1	To cash, 25.00	25 00	Oct. 1	By am't from 34	297 08
" "	" " New York	40 00	Nov. 1	" one mo's services	60 00
" 8	" " 25.00; 26, 25.00	50 00			
	" balance	242 08			
		357 08			357 08
Nov. 2	To cash, 25.00; 10, 25.00	50 00	Nov. 1	By balance	242 08
" 20	" " 25.00	25 00	Dec. 1	" one mo's services	60 00
	" balance	227 08			
		302 08			302 08
Dec. 4	To cash, 25.00	25 00	Dec. 1	By balance	227 08
	" balance	262 08	1859. Jan'y 1	" one mo's services	60 00
		287 08			287 08
1859.			1859.		
Jan'y 1	To cash, 25.00	25 00	Jan'y 1	By balance	262 08
"	" balance	297 08	Feb'y 1	" one mo's services	60 00
		322 08			322 08
Feb'y 2	To cash	25 00	Feb'y 1	By balance	297 08
14	" "	25 00	Mar. 1	" one mo's services	60 00
	" balance	307 08			
		357 08			357 08
Mar. 3	To cash	25 00	Mar. 1	By balance	307 08
21	" 1.50 poll tax, &c	1 50	April 1	" one mo's services	60 00
	" balance	340 58			
		367 08			367 08
Ap'l 8	To cash	25 00	April 1	By balance	340 58
"	" balance	375 58	May 1	" one mo's services	60 00
		400 58			400 58
May 2	To cash, 75.00; 4, 25.00	100 00	May 1	By balance	375 58
"	" balance	335 58	June 1	" service	60 00
		435 58			435 58
" 31	To cash	25 00	June 1	By balance	335 58
June 30	" balance	370 58	July 1	" services	60 00
		395 58			395 58
July 1	To cash	25 00	July 1	By balance	370 58
"	" balance	405 58	Aug. 1	" services	60 00
		430 58			430 58
Aug. 2	To cash	25 00	Aug. 1	By balance	405 58
"	" balance	440 58	31	" services	60 00
		465 58			465 58
Sept. 3	To cash	75 00	Sept. 1	By balance	440 58
"	" balance	425 58	31	" services	60 00
		500 58			500 58

36 T. N. C. QUARLES.

1859.				1859.	Commenced October 1st at 1,000 per annum.	
Oct. 31	To balance	680 58		Oct. 1	By am't from 35	425 58
				1	" 15# mo. for 12 mo. omitted	180 00
				31	" services	75 00
		680 58				680 58
Nov. 1	To cash	25 00		Nov. 1	By balance	680 58
	" balance	747 25		1	" services in October	8 33
				30	" services	83 34
		772 25				772 25
Dec. 15	To cash	25 00		Dec. 1	By balance	747 25
	" balance	805 59		31	" services	83 34
		830 59				830 59
1860.				1860.		
Jan'y 30	To cash	25 00		Jan'y 2	By balance from old ledger	805 59
3	" balance	863 92		31	" services, one month	83 33
		888 92				888 92
Feb'y 18	To cash	25 00		Feb'y 1	By balance	863 92
29	" balance	922 25		29	" services, one month	83 33
		947 25				947 25
M'ch 6	To cash	25 00		M'ch 1	By balance	922 25
31	" balance	980 58		31	" services, one month	83 33
		1,005 58				1,005 58
Ap'l 16	To cash	25 00		Apr. 2	By balance	980 58
30	" balance	1,938 91		30	" services, one month	83 33
		1,063 91				1,063 91
May 1	To cash	40 00		May 1	By balance	1,038 91
15	" "	25 00		June 1	" services	83 33
21	" "	15 00			Error in adding, 892.24.	
26	" "	154 00				
June 1	" bal	829 24				
		1,059 24				1,059 24
July 17	To cash p'd Geo. Patterson	2 50		June 1	By bal	829 24
Sept. 1	" " 30.00 ; 20, 25.00 ; 21, 10.00	65 00		" 30	" services, one month	83 33
				July 31	" do. " do	83 33
Oct. 1	" " 25.00	25 00		Aug. 31	" " " "	83 33
Nov. 21	" " 50.00	50 00		Sept. 30	" " " "	83 33
30	" balance	1,226 27		Oct. 31	" " " "	83 33
				Nov. 30	" " " "	83 33
				"	10 p. c. due June 1st, '60	39 55
		1,368 77				1,368 77
Dec. 3	To cash	50 00		Dec. 1	By balance	1,226 27
31	" do. Jan'y 1st, 50	50 00		31	" services, one month	83 34
"	" balance forward	1,209 61				
		1,309 61				1,309 61

37 T. N. C. QUARLES.

1861.				1861.		
Jan'y 28	To cash	50 00		Jan'y 1	By am't from 36	1,209 61
	" balance	1,305 94		"	" error, June 1st, '60	63 00
				"	" on same	
				31	" services, one mo.	83 33
		1,355 94				1,355 94
Feb'y 13	To cash	15 00		Feb'y 1	By balance	1,305 94
28	" balance	1,384 27		28	" services, one mo.	83 33
		1,399 27				1,399 27

T. N. C QUARLES—Continued.

1861.				1861.		
M'ch 1	To cash	35 00		M'ch 1	By balance	1,384 27
23	" do.	15 00		31	" services, one mo.	83 33
		1,417 60				
		1,467 60				1,467 60
Ap'l 2	To cash	35 00		Ap'l 1	By balance	1,417 60
30	" balance	1,465 93		30	" services, one month	83 33
		1,500 93				1,500 93
May 4	To cash	50 00		May 1	By balance	1,465 93
31	" balance	1,499 26		31	" services, one month	83 33
		1,549 26				1,549 26
June 1	To cash	25 00		June 1	By balance	1,499 26
19	" Dr.	25 00		1	" interest on 892.24, @ 10 %	89 22
30	" balance	1,621 81		30	" services, one month	83 33
		1,671 81				1,671 81
July 16	To cash	25 00		July 1	By balance	1,621 81
31	" balance	1,680 15		31	" services, one month	83 34
		1,705 15				1,705 15
Aug't 1	To cash	25 00		Aug't 1	By balance	1,680 15
31	" balance	1,738 48		31	" services, one month	83 33
		1,763 48				1,763 48
Sept. 2	To cash	25 00		Sep't 1	By balance	1,738 48
30	" balance	1,796 82		31	" services, one month	83 34
		1,821 82				1,821 82
Oct. 1	To cash	25 00		Oct. 1	By services, balance	1,796 82
31	" balance	1,855 15		31	" services, one month	83 33
		1,880 15				1,880 15
Nov'r 1	To cash, board	25 00		Nov'r 1	By balance	1,855 15
13	" "	25 00		" 30	" services	83 33
23	" "	50 00				
30	" balance	1,838 48				
		1,938 48				1,938 48

38 T. N. C. QUARLES.

1861.				1861.		
Dec. 2	To cash, 20 board	20 00		Dec. 1	By balance from 37	1,838 48
" 3	" " 3 west	3 00		31	" services, one month	83 33
31	" balance	1,898 81				
		1,921 81				1,921 81
1862.				1862.		
Jan'y 30	To cash	25 00		Jan'y 1	By balance	1,898 81
31	" balance	1,957 14		31	" services, one month	83 33
		1,982 14				1,982 14
Feb'y 1	To cash, 20.00; 28, 20.00	40 00		Feb'y 1	By balance	1,957 14
28	" balance	2,000 47		28	" services, one month	83 33
		2,040 47				2,040 47
M'ch 13	To cash	65 00		M'ch 1	By balance	2,000 47
31	" balance	2,018 80		31	" services, one month	83 33
		2,083 80				2,083 80
Ap'l 1	To cash	25 00		Ap'l 1	By balance	2,018 80
30	" balance	2,077 13		30	" services, one month	83 33
		2,102 13				2,102 13
May 1	To cash	25 00		May 1	By balance	2,077 13
26	" "	25 00		31	" int on 1861 ⅚	186 10
31	" balance	2,296 56			" services, one month	83 33
		2,346 56				2,346 56

T. N. C. QUARLES—Continued.

1861.				1861.		
July 21	To cash	25 00		June 1	By balance	2,296 56
22	" " change notes	129 00		30	" services, one month	83 33
"	" "	700 00		July 31	" services " "	83 33
Aug. 1	" Cockrell's bill, 51.50; 10.00 prem	61 50				
31	" balance	1,547 72				
		2,463 22				2,463 22
Sept'r 29	To cash	35 00		Aug. 1	By balance	1,547 72
Oct'r 15	" " 40.00; 25, 25.00	65 00		31	" services, one month	83 33
31	" balance	1,697 72		Sep't 30	" " " "	83 33
				Oct. 31	" " " "	83 34
		1,797 72				1,797 72
Nov'r 1	To cash	50 00		Nov'r 1	By balance	1,697 72
14	" do	50 00		30	" services, one month	83 33
30	" balance	1,681 05				
		1,781 05				1,781 05
Dec'r 1	To cash	50 00		Dec'r 1	By balance	1,681 05
10	" "	50 00		31	" services, one month	83 33
31	" balance	1,664 38				
		1,764 38				1,764 38
1863.				1863.		
Jan'y 1	To cash	50 00		Jan'y 1	By balance	1,664 38
13	" do. 25.00; 27, 25.00	50 00		31	" services, one mo	83 33
31	" balance forward	1,647 71				
		1,747 71				1,747 71

39 T. N. C. QUARLES

1863.				1863.		
Feb'y 4	To cash, 25.00; 7, 25.00	50 00		Feb'y 1	By am't from 38	1,647 71
28	" balance	1,681 05		28	" services, one month	83 34
		1,731 05				1,731 05
M'ch 7	To cash, 25.00; 16, 25.00	50 00		M'ch 1	By balance	1,681 05
24	" "	1,600 00		31	" services, one month	83 34
31	" balance	114 39				
		1,764 39				764 39
April 15	To cash, 25.00	25 00		April 1	By balance	114 39
30	" balance	172 72		30	" services, one month	83 33
		197 72				197 72
May 7	To cash, 25.00	25 00		May 1	By balance	172 72
	" balance	231 05		30	" services, one month	83 33
		256 05				256 05
June 2	To cash, 25.00; 13, 25.00	50 00		June 1	By balance	231 05
22	" " 25.00	25 00		30	" services, one month	83 34
30	" balance	239 39				
		314 39				314 39
July 2	To cash, 25.00; 27, 25.00	50 00		July 1	By balance	239 39
31	" balance	306 05		"	" services in June	16 66
				31	" services	100 00
		356 05				356 05
Aug't 31	To balance	406 05		Aug't 1	By balance	306 05
				31	" services, one month	100 00
		406 05				406 05
Sept'r 26	To cash	25 00		Sept. 1	By balance	406 05
30	" balance	481 05		30	" services, one month	100 00
		506 05				506 05

T. N. C. QUARLES—Continued.

1863.			1863.		
Aug't 29	To bill of Devlin & Co.	40 00	Oct. 1	By balance	481 05
Sept'r 30	" " " "	22 00	31	" services, one month	100 00
Oct. 31	" cash & nds	19 05			
"	" balance	500 00			
		581 05			581 05
Nov. 7	To cash	25 00	Nov. 1	By balance	500 00
20	" do	25 00	30	" services, one month	100 00
27	" do	25 00			
30	" balance	525 00			
		600 00			600 00
Dec'r 10	To cash	25 00	Dec'r 1	By balance	525 00
26	" do	25 00	31	" services, one month	100 00
25	" diamond pin, 351	75 00			
31	" balance forward	500 00			
		625 00			625 00

40 T. N. QUARLES.

1864.			1864.		
Jan'y 13	To cash, 25.00	25 00	Jan'y 1	By am't from 39	500 00
31	" balance	597 00	20	" chy. Sept'r 30th, overcoat	22 00
			31	" services, one month	100 00
		622 00			622 00
Feb'y 1	To cash, 25.00; 5, 25.00	50 00	Feb'y 1	By balance	597 00
29	" balance	647 00	29	" services, one month	100 00
		697 00			697 00
March 2	To cash, 25.00; 21, 25.00	50 00	M'ch 1	By balance	647 00
31	" balance	697 00	31	" services, one month	100 00
		747 00			747 00
April 1	To cash, 25.00; 12, 25.00	50 00	April 1	By balance	697 00
20	" " 25.00	25 00	30	" int. on 231, 10 p'r c't	23 00
		745 00		" services, one month	100 00
		820 00			820 00
May 4	To cash, 25.00; 14 & 16, 25.00; 25, 25.00	75 00	May 1	By balance	745 00
31	" balance	770 00	31	" services, one month	100 00
		845 00			845 00
June 2	To cash, 25.00; 16, 25.00; 30, 25.00	75 00	June 1	By balance	770 00
			1	" int. 1st June, '62	229 65
30	" balance	1,014 65	30	" services, one month	100 00
		1,099 65			1,099 65
July 19	To cash, 25.00; 22, 25.00	50 00	July 1	By balance	1,014 65
Aug. 9	" " 25.00; 28, 500.00	525 00	31	" services, one month	100 00
31	" balance	1,139 65	31	" cash returned	500 00
			31	" services, one month	100 00
		1,714 65			1,714 65
Sept. 12	To cash, 25.00; 20, 25.00; 27, 25.00	75 00	Sept. 1	By balance	1,139 65
	" balance	1,164 65	30	" services, one month	100 00
		1,239 65			1,239 65
		From	Ledger	D.	
Oct'r 21	To cash	25 00	Oct'r 7	By balance	1,164 65
31	" "	25 00	31	" services, one month	100 00
31	" balance	1,214 65			
		1,264 65			1,264 65
Nov'r 4	To cash	25 00	Nov'r 1	By balance	1,214 65
11	" " 25.00; 20, 25.00	50 00	30	" services, one mo.	100 00
30	" balance forward	1,239 65			
		1,314 65			1,314 65

1 T. N. QUARLES.

1864.				1864.		
Dec'r 3	To cash, 25.00; 8, 25.00	50 00		Dec'r 1	By amount from 40	1, 239 65
17	" " 25.00	25 00		31	" services, one month	100 00
31	" balance	1, 264 65				
		1, 339 65				1, 339 65
1865.				1865.		
Jan'y 9	To cash, 25.00; 13, 25.00	50 00		Jan'y 1	By balance	1, 264 65
26	" do.	25 00		31	" services, one mo	100 00
31	" balance	1, 289 65				
		1, 364 65				1, 364 65
Feb'y 25	To cash, 25.00	25 00		Feb'y 1	By balance	1, 289 65
28	" balance	1, 364 65		28	" services, one mo	100 00
		1, 389 65				1, 389 65
M'ch 11	To cash	250 00		M'ch 1	By balance	1, 364 65
31	" balance	1, 214 65		31	" services, one mo	100 00
		1, 464 65				1, 464 65
Apr'l 4	To cash, 25.00	25 00		A'ril 1	By balance	1, 214 65
30	" balance	1, 737 10		30	" services, one mo	100 00
				"	" extra "	350 00
				"	" 10 % on balance	97 45
		1, 762 10				1 762 10
May 22	To cash	25 00		May 1	By balance	1, 737 10
31	" balance	1, 920 44		31	" services, one mo	208 34
		1, 945 44				1, 945 44
June 3	To cash, 25.00	25 00		June 1	By balance	1, 920 44
21	" " 25	25 00		30	" services, one mo	208 34
30	" balance	2, 078 78				
		2, 128 78				2, 128 78
July 18	To cash	25 00		July 1	By balance	2, 078 78
25	" " 25.00	25 00		31	" services, one mo	208 33
31	" balance f'rward	2, 237 11				
		2, 287 11				2, 287 11

42 T. N. QUARLES.

				1865.		
1865.				Aug. 31	By balance from 41	2, 237 11
Dec'r 30	To balance	3, 278 78		" 31	" services, one mo	208 34
				Sept. 30	" " " "	208 33
				Oct. 31	" " " "	208 34
				Nov. 30	" " " "	208 34
				Dec'r 30	" " " "	208 33
		3, 278 78				3, 278 78
1866.				1866.		
Jan'y 4	To cash	225 00		Jan'y 1	By balance	3, 278 78
" 5	" "	75 00		3	" cash	1, 000 00
" 5	" D. B. S. gun	100 00				
" "	" S. P. & flask	6 00				
" "	" gold guard chain	16 00				
" 31	" Goodlow	1, 000 00				
" "	" Afflick	75 00				
" "	" E. A. W. White	341 00				
	To balance	2, 446 78				
		4, 278 78				4, 278 78
1866.				1866.		
Feb'y 21	Cash (Goodlow)	2, 455 22		Jan'y 31	By balance	2, 446 78
				Feb'y 21	" interest	8 44
		2, 455 22				2, 455 22

43 Plaintiff then introduced and read the following letters, Exhibits C, D, E, F, G, M, N, A, O, P, Q, eleven in number, all of which were proven to be genuine, and are as follows:

EXHIBIT C.

MEMPHIS, TENN., *June* 29, '65.

DEAR AUNT: Your most welcome letter came to hand after a long time out. I wrote to cousin Julia, by Bunt Byrume, and requested her to say to you that you could use the money. So soon as the railroad is repaired I want to come up and settle the business left by mother. All letters from any of you give me but very little information as regards her death. None yet have said where her last resting place is & what her last words were to me. I am trying to hear from Virginia, and think I will hear very soon. It will be necessary for me to go there as early as I can. The place where I was born has fallen to me since the of Geo. B. Mill, and it is not attended to it may be sold for taxes. I shall write again to some one in Richmond. I have learned that Thomas Delavan is still in business on Broad street. Give my love to cousin Julia, her husband, and all the servants. How is Jerry, Jane, and all? Tell Mr. E.
44 M. Snoope I would be glad to receive a letter from him.
Remember me to him and all enquiring friends.
My health is good.
Write soon by the way of Huntsville.
Your affec. nephew,

T. N. Q.

EXHIBIT D.

MEMPHIS, TENN., *June* 20, '65.

DEAR AUNT: Your much welcomed letter came to hand by due course of mail, but was a long time about it. It was received some days since, but an opportunity to send made me defer.

This will be handed you by Mrs. Branch. The request you made in your letter I will freely grant.

I want, as soon as the roads are opened, to come up and settle the business matters of mother's, & assist you in any way I can.

You will please get the papers all together as well as you can by the time I come, and write me what she said at her last. Strange to say, no one has said where she was buried. I have much to say when I come up. The parties are waiting for this, and I must close, with love to all. I wrote a few days since to Julia, by Burt Byrume. Write immediately to
Your affectionate nephew,

T. N. Q.

45 EXHIBIT E.

Mr. SEMPLE ELLET, *Taylorsville, Va.:*

DEAR UNCLE: I have received but one letter from you since I was in Va., and I believe have answered that, & I would like to know how it is I cannot get some one to favor me with old Va. news occasionally, and

knowing no one that I had sooner hear from than yourself & family, I write, hoping soon to hear from you, &c.

I have just heard from mother, & she, they are all well in Alabama. I suppose by this time, you have seen uncle Wm. and cousin Julia, who are on a visit to Va. I asked uncle Wm. to see what Mr. Minor is doing. I think he has been rather tardy in looking into the estate of grandfather and grandmother. I rec'd a letter from him some month' since. He has examined the records in regard to their wills, and holds out a probable chance of my having some interest, more particularly in grandmother's estate, and some in the other, & I had hoped you would see to it for me, knowing my situation as you do, and my inability to be in Va. to attend to it personally.

I cannot afford to spare the time from the store. If I quit my situation I would be on expenses all the time, and that would not be well for me now that I have a good situation and can keep it; still I am trying to do better.

46 I want to, if I can, to make arrangements to go in the grocery & commission business in a house in this city, as a partner in the concern, and I hope I can do so this summer.

If you have seen Mr. Minor, try and get him to have the thing in court and through as soon as possible; I do not want to wait all of the "law's delay," say, for 2 or 3 years; I ask you, believing you will cheerfully do this much for me; I wish you to write me on this subject soon, if you please. I do not know of any news to write you from this quarter of the globe. The Mississippi River is yet very high at this point, and is miles wide opposite; much of the country has and is overflowed below.

Our city is all alive now with politics; also with strangers who are going east.

We are now just beginning to come into the fruit season; apples, cherries, &c.; strawberries are nearly gone; the planters have fine stands of corn & cotton. I think you had better quit the sand and gravel hills, & come to West Tennessee or Arkansas. You can make double the money with half the work.

Hoping you will kindly remember me to aunt Bettie & the children, I am, as ever, very repectfully,

T. N. QUARLES.

MEMPHIS, *May 23d*, '59.

47 EXHIBIT F.

DEAR COUSIN: I look not upon death as some who are unwilling to die. I have a comfort left, that though it be in the power of the weakest arm to take away life, it is not in the strongest to deprive us of death. God would not exempt Himself from that, the misery of immortality in the flesh; He undertook not that was immortal. Certainly there is no happiness within this circle of flesh, nor is it in the optics of those eyes to behold felicity; the first day of our jubilee is death.

There is no misery in man save within himself, and so, indeed, in his own sense the stoic is in the right, and, dear cousin, the winged messenger of death stops not with his sickle. He has removed from among us our much loved aunt—our dear aunt Purnelia. She died on the evening of December 1st,

1865, after a long illness with fever. Two weeks before she died she importuned her friends with whom she had been staying *with*, to write to me to come, as she was anxious to see me.

I did not receive the letter until I had heard a rumor of her death; therefore waited a day or two, and the rumor was confirmed. So I have not been up, as after death my presence could not avail anything.

Cousin Julia and her husband (Mr. William Goodloe) were ab-
48 sent from home at the time. Cousin Julia knew of her illness, but her child also was very sick, and she had to remain with it; so our dear died without a relation to weep above her, as I expect to; nevertheless, as I understood from Mr. Goodloe, she received every care that one could wish for. He reached home that day and superintended her burial. Aunt was interred in the family burial-grounds alongside of uncle Harman.

I know she was well cared for, and probably better than we could, with the means we had at hand. Thanks "'tis not all of life to live, nor all of death to die." Aunt died at Flower Hill, six miles from cousin Julia's place. How often I think of her and myself. Mark the comparison (save she is married & has a little babe & a husband to love); she has none to love, none to caress, no one to share this hearty tenderness. Ah! now cousin J. is married, I feel as though I was left in this wide western world and no one to care for me, save an old friend of my mother's, who some time since came into the store and said, "How d'y', Thos.? I came in to see you," she said; "if you get sick or want anything let me know, and I will be a mother to you." This lady is Mrs. Gov. Jas. C. J., which was a coincidence which occurred about the time of my mother's death. Mrs. J. came into the store, & when I spoke to her I said, "How d'y', mother?"

which was about the time of my mother's death, and I had not
49 heard of it for two months after. Indeed, she is to me now like a mother. Cousin, I took (under the circumstances) the liberty to read your letter to auntie, which I shall answer more fully, as I shall on Jan'y 5, '66, start for Alabama, to Coz. Julia's, & when we are together I can write more fully; while here I am overdone with work. I will remain in Alabama about four weeks. You may direct your letters to Memphis, "care of F. H. C. & Co.;" then I will get them sooner. I do not see why you should not write to me, at least occasionally. You must not expect one who is at all times busy to write punctually. Write about all of our friends & relations, their whereabouts, what they are doing, and whether they are living or not; who was in the war, and who was killed or wounded. I hope Mans. was on our side.

EXHIBIT G.

MEMPHIS, *April 20th*, 1866.

SEMPLE ELLETT, Esq.:

D'R SIR: I had a call to-day from Mr. Stebbins, asking in your name in regard to the death of Thomas Quarles.

On or about the 7th of Jan'ry, '65, Thomas started for Courtland, Ala., to attend to the property left by his mother, who died upwards of a year ago; reached there, and in the course of a visit to his cousin, Mrs. Wm. Goodloe, got up a duck hunt. They fixed the blind, both anxious to

50 get first bird, Thomas ahead, when Goodloe's gun went off, and the ball lodged in his (Thomas') shoulder. The 3rd day after the wound *eresuplis* set in, followed by lockjaw, and carried him off on the 4th day.

I learned from Mr. Goodloe that Thomas made verbal request to his cousin in regard to disposition of his property.

Goodloe confirmed himself as administrator and took possession of his personal property here.

Thomas was shot on the 18th Jan'y & died on the 24th, '65.

Respectfully, yours,

JAMES S. WILKINS.

EXHIBIT M.

MEMPHIS, *Feb'y 23d*, '66.

SEMPLE ELLETT, Esq.:

D'R SIR: Yours of the 10th instant is at hand. In reply I can only inform you this much: At the time of his death he was in our employ. Some few days after his death Mr. Wm. Goodloe came here with letters of administration properly made out & took possession of his effects & moneys to the am't of some $3,500. I learned from Wm. that Thos. had other moneys due him, & that he should proceed to collect. Our Mr. Clark died on 21st Jan'y & Thomas on the 24th. Not having any knowledge of Thomas' outside matters in regard to his mother's
51 estate, I cannot answer. Wm. told me that Thomas told his Cousin Wm.'s wife that he wished his property equally divided amongst his next kin. Wm. is the only one who can give you full answers to the questions you ask. Trusting you will receive such a statement from him as will be satisfactory, I am,

Yours, respectfully,

JAMES S. WILKINS,
Firm of F. H. Clark & Co.

EXHIBIT N.

Mr. SEMPLE ELLETT, *Taylorsville, Va.:*

DEAR UNCLE: By this you will see that I am again in Memphis. From Richmond I visited the eastern cities. In Washington I met with many acquaintances. While there I visited the different places of interest, and then proceeded on our journey, stopping at each city long enough to see all the objects of interest. We arrived at last in New York, and that is the city of all so long as you remain on Broadway. I staid there about a week, and then went directly to Niagara Falls. They are truly grand. I will not attempt to describe. Came then to Buffalo, and through Ohio to Cincinnati & Louisville to Uncle Otter's. I found him quite unwell; he had a cough. Aunt Purnelia never looked to be in better health. I wish you would come out from that old country; there is better land over here in Arkansas at $5 per acre than you can find in Va. Uncle
52 William will come also. Each of you might buy a place adjoining, and make a pleasant neighborhood. Mr. Otter will come also. I wish you would write me word who received the 20,000 dollars, and when

he got it. Did he get it at Hanover Court-House of the court? How much did each one receive of the 5,000 which he divided among the heirs? Remember me kindly to aunt Bettie. I hope to repay your kindness some day, &c. Remind me to all, and write soon to me. Do not put it off, old Va. style.

Truly, yours, &c.,

T. N. QUARLES.

MEMPHIS, *Sept.* 16, '58.

I send you a paper. Look at the lands advertised, & see if you will not come out. Uncle Wm. wants to move where he can make a bale of cotton to the acre, and 10 bales to the hand, &c. These lands can be bought at a low figure, and only 10 per c. cash on the purchase money; balance in 5 years, &c.

EXHIBIT A.

MEMPHIS, *Tenn.*, *Feb'y* 24, '56.

COUSIN EDMONIA: Yours of the 13th came to hand on the 22nd, a day long to be remembered by all true Americans, the anniversary of the natal day of the great Father of our Country, "The first in war, the first in peace, & the first in the hearts of his fellow-countrymen." We, the de-
53 scendants of so excellent and illustrious a progenator, and the happy inheritors of the rich legacy of liberty he has bequeathed to us, thought it no less a duty than a pleasure to pay due reverence to the birth-day of Geo. Washington.

We had quite a grand turnout of the City Guards & Washington Riflemen; also a salute from the navy yard. It was grand to hear the booming of the cannon. Well, I must say I do not feel as if I had entirely left old Courtland yet, since there are here several from the above-named place; they are (tell cousin Julia) Sam Pointer, Kirby, & Tom Barbie; all are in business. We have quite a good time when we all get together on Sundays, & at night. I heard from home not long since; they were all well & had nothing more for me to say to you, &c. Cousin, I am glad to find that you are doing good for evil, and that you spent a very pleasant Christmas.

I will not offer any more excuses, since they are so "cheap;" they are not worth taking, consequently not worth giving. Without offering an excuse I will say you must not look for an interesting letter; time and news are both scarce with me, & the latter is very necessary to compile an interesting letter.

Well, I guess I had as well give you the news at once; there is nothing new of importance to write about. I may go to Arkansas to the
54 Hot Springs during the summer (after I am married) on a pleasure trip. I should be glad to see you and cousin Julia out here about the time, & go with me. I cannot think of going back to old Alabama, for 'tis westward I shall take my course, as doth the empires. I know you will not believe me until you get an invitation to come and see cousin Mary. Now, I guess you would like to know something about her. Well, since I am setting in my (has *bin*, so I thought) bachelor chamber, up three flight of stairs, and being somewhat comfortably seated, I think of many things that have been and are and may be, & of immeasurable things

which are not & never were and never may be; I begin by remembering the time when I was a small boy and longed for the time when I should become a man. But alas, from that time to this seemed a long, long way then; but now it seems but one brief step, and the incidents of early youth come back in all their freshness upon me as incidents of last week.

(On margin:) Excuse imperfections, I am cold.

Well, I doubtless had better commence with her parentage & home first. Her father lives on the top of a high hill overlooking the river, & the house is surrounded by tall oaks that wave their majestic branches to & fro over the old mansion. Her father is well nigh the grave, & mother somewhat stricken in age; but she is just in the prime of life, being
55 only one year past "sweet sixteen," and environed by many warm and loving friends. She is not large, being about the medium size, with fine black eyes & hair, cheeks as fair e'er the sun shone on, and, as Shakspeare would have it, pretty enough to cut in small pieces to make stars of & deck the heavens. Now, you may say that I am desperately in love, but I have gotten over all heart diseases of my youth—no, not exactly; that portion of my anatomy may be somewhat touched yet. Ah, many of these are fireside fancies. So write soon to your cousin.

Love to yourself & cousin July, & the girls too.

THOMAS QUARLES.

Tell Cousin Julia Bob Abernathy will be here to-night on his way to Arkansas to get married.

T. N. C. Q.

EXHIBIT O.

MEMPHIS, *Jan'y 1st*, 1866.

MY DEAR COUSIN EDDIE: Your most kind and welcome letter came to hand some days since (enveloping one to our aunt), but for many reasons I have not answered until now. I would have written to you long since, but did not know there was mail communication; now that we can speak, (as 'twere) through this medium 'tis painful to do so. These lines
56 bear to you and all of my much loved kindred the sad intelligence of the death of my beloved mother. She came to this place during the war and Federal occupation in the winter of 1864, about the first of January, which was about the coldest weather we have ever had here; she came overland by private conveyance and passed both lines of the contending armies in safety, to see me & to make some necessary purchases, expecting soon to return, but the weather continued so severe, the return trip, through my solicitations, was put off for a time; when she left it was in March; she went from here via Nashville, & thence to Huntsvill', Ala., where she was detained by Federal authority, not being allowed to pass the lines with her goods; she did not reach home until some time in August; her health in the mean time became quite bad, from cold contracted while on her visit to see me. The disease settled in her lower limbs, and after a few days severe suffering, and while yet insensible & uncon'cious, death relieved her at 3 o'c. on the morning of December 6th, 1864. I was not a little surprised when I read your letter to find that Cousin Julia,

then within the Confederate lines did not inform you; you say you have had a rumor; would that were all. Ere this you have heard positively. A mighty change has been made by death, and it is visible to all of us who live, and he that escapes until winter, only stays for another
57 opportunity. The autumn with its fruits promises disorders for us, and the winter's cold turns them into sharp diseases, and the summer gives green turf and brambles to bind upon our graves. Ah, now, Cousin Julia is married, I feel as though I was left in this wide world, and no one to care for me save an old friend of my mother's, who some time since came into the store and said, "How 'd'y Thomas, I came in to see you; if you get sick or want anything let me know, and I will be a mother to you." This lady is Mrs. Ex. Gov. James C. Jones. Once, about the time of my mother's death, she came into the store, and I, in speaking to her, said "How 'd'y, mother," not dreaming at the time my mother was no more; two months after came the sad intelligence. Indeed Mrs. J. is now to me like a mother. Cousin (under the circumstances) I took the liberty to read your letter to our aunt, Pernelia. I shall start for Ala. on Jan'y 5, '66, and will then try to answer more fully, when I have more time, and we will be together. I will remain in Ala. about four weeks; you may direct your letter to Memphis, care of F. H. Clark & Co.; then I will get them sooner. I do not see why you should not write to me occasionally; you know I am at all times busy, and you must not expect me to be very punctual. Write about all of our friends and relatives, their whereabouts, what they are doing and who are living, who was in the war, and who was killed or wounded. I hope Mans. was on our side. Alas,
58 dear cousin, the tide of mortality stops not here; I look not on death as some who are unwilling to die; I have a comfort left; though it be in the power of the weakest arm to take life, it is not in the strongest to deprive us of death. God would not exempt himself from that—the misery of immortality in the flesh; He undertook not, that was immortal. Certainly there is no happiness within this circle of flesh, nor is it in the optics of those eyes to behold felicity; the first day of our jubilee is death. There is no misery in man save within himself; and so, indeed, in his own sense, the stoic is in the right.

And, dear cousin, the winged messenger of death stopped not. With his sickle he has removed from among us our much-loved aunt, our dear Aunt Permelia. She died on the morning of December 1st, 1865, (note this, the difference one year less 5 days) after a long illness. "Disease, fever." Two weeks before she died she importuned our friends with whom she was then staying to write me to come up, as she was very anxious to see me. I did not receive the letter until I had heard a rumor that she had died; therefore waited a day or two and the rumor was confirmed, so I have not been up, as after death my presence could not avail anything. Cousin Julia and her husband (Mr. William Goodloe) were absent
59 from home at the time. Cousin J. knew of aunt's illness at the time, but her babe also was very ill, and she had to remain with it. So our dear aunt died & was buried without a relation to weep over her, as I expect to; nevertheless, as I understood from Mr. G., she received every care that we could have given her. Mr. G. was absent with Cousin Julia, but left her and reached home in time to superintend her burial. Aunt was inter'ed in the family burying grounds alongside our Uncle Harman. Aunt was well cared for. I was about sending her some things to

comfort her when I heard of her death. She died under the kind attentions of Mrs. Gen'l Lowe, at Flower Hill, six miles from Co's. Julia's. "'Tis not all of life to live nor all of death to die." Dear cousin, you do not know how lonely I feel in this great western world, where I have not a relative, & cousin Julia in North Ala. She, too, has no father, mother, brother, or sister, as myself; but time has been kind & hard to me. I have made some money; I still remain at the house in which I was in when you were in N. Ala. Is Uncle Geo. B. Mill dead, and how is Uncle Rob't & S. and their respective families? Write me all, and tell uncles to write to me & Thad. also.

Done in great haste.

Love to all.

Your affectionate cousin,

THOS. N. QUARLES.

(On margin:) Done at night and in haste; excuse imperfections.

60 EXHIBIT P.

MEMPHIS, TENN.

Youth's honied cud of quiet thought we love to ruminate.

DEAR COUSIN EDDIE: Greatly was I surprised a few days since to rec'v. a letter from thee containing a line of remembrance from you, and I now have seated myself to do that pleasant task of writing to you on this the holy Sabbath day, a most delightful eve, now that the charmed sunset lingers low down in the red west. The fair will commence here on next Tuesday, and hold until Saturday, inclusive. I do not expect to go more than one day; if I was not so busy I should like to go every day, and nothing could afford me greater pleasure than to have your company. All seem to think that it will be a grand affair. I should like very much to be in Kentucky at the fair at Bowling G. and at Glascow.

I had a very pleasant trip home, but could not get a seat on the cars for a long while after leaving Courtland. There were a great many ladies aboard, and were all 'sleep. What a pit*t*y it was that I did not know some of them well enough to get a pair gloves, but I could have gotten none like one I
well remember. Well, I hardly know what to write about. I
61 could easier answer a letter. Well, I do not know what to write you to interest any one. You would not like for me to write you a love letter, & I cannot a metaphysical one, so if you will allow me (what do you think of it, mon ami?) I will write about the seasons, about October, which comes into the world like some grand monarch of the east, with gorgeous robes of gold and crimson, and flying colors of leaf and flowers, and all the earth and heavens are afresh with his royal presence. May is the very breathing time of joy, and is associated with all ideas of youth, freshness, beauty, and gladness. Then we find that a great deal of "the bliss of paradise" has "survived the *the* fall" of the last year's leaves which were their Eden, for the birds sing as joyously as ever, and make nature's solemn heart as full of sweet voices and delicate pulses of music. But October is the matured year—it is the period that has attained "the philosophic mind," so to speak. This mingling of sweet and melancholy

thought with the year's consum'ation and beautiful decline, has expressed itself in all the poets. May and Oct., one is the sweet epicurian in the full sunshine of to-day, the other is full of the "divine philosophy, more musical than Apollo's lute."

I had a letter from mother a few days since. All were well. She told me all about your fishing, and the beaux you had, &c. You must
62 by all means visit the cave while in Ky., and how is Co's. Julia getting on, now that the doc. is far away? Kindly remember me to her, &c. Tell uncle and aunt I should be glad to come and see them, but I am very busy at this time, and they must take the wish for the deed.

My love to all. Write soon to

Yours, truly,

T. N. C. QUARLES.

OCT. 9TH, '59.

EXHIBIT Q.

MEMPHIS, TENN.

DEAR UNCLE & AUNT: It always seems a pleasure to write to you, and to hear from you, and, as some time has passed since I last wrote, I avail myself of this opportunity. I have been very busy or I should have done so sooner. I am glad to say my general health is quite good, and hope this will find all well with you. I wrote to Cousin Edmonia nearly a month since, and have not heard if she rec'd my letter. I directed it to you, not her, thinking she would more probably get it from the post-office. I heard from Ala. lately. All are well. They never have any news.

How did you like the Bobo place? I think you would be better
93 pleased living in Bowling Green. Any place suits me so I can make a living. I am satisfied we cannot live always, and to the grave is but a few places at best. This now is our busy season and everything goes with a rush. The river is remarkably low. Last week we had a very sudden change in the weather; the thermometer fell 30 degrees in two hours, and next day we had snow, sleet, &c., yet 'tis quite pleasant now. I have nothing of importance to write, being so busy. I do not keep up with the times. I send you a paper. Kind wishes to all. Write soon to

Your nephew,

T. QUARLES.

NOV. 19, '59.

It was admitted by the defendant that the place called the Bobo place in the letter of T. N. Quarles to his uncle and aunt, under date of Nov. 19th, 1859, is and was in North Alabama, near the place of Wm. Ellett, and near the town of Courtland.

Plaintiff then read the depositions of Sally Puryear and Thomas C. Ellett, filed Sept. 21st, in words and figures following:

UNITED STATES OF AMERICA,
District of West Tennessee:

To Wm. Josiah Leake, notary public for the city of Richmond, and
64 county of Hanover, Virginia:

Trusting in your fidelity and capacity to examine witnesses, you

are hereby authorized and empowered to cause Sallie Puryear and Thos. C. Ellett to come before you on the 16th day of September next, at Chickahominy Swamp, Hanover Co., Va., and them diligently to examine touching their knowledge of the matters in controversy in a cause now pending in the circuit court of the United States for said district, wherein Semple Ellett, administrator of T. N. Quarles, dec'd, is plaintiff, and James S. Wilkins, surviving partner of F. H. Clark & Co. is defendant, said examination, reduced to writing and signed by said witnesses, to be read as evidence on behalf of the plaintiff on the trial of said cause; and the same duly certified under your hand and seal, to return with this writ to this office without delay.

Witness Abram S. Mitchell, clerk, and the seal of said court, at office in Memphis, this first day of *of* September, A. D. 1870.

[SEAL.] A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

In the circuit court of the United States for the western district of Tennessee.

SEMPLE ELLETT, AD'R,
vs.
JAMES S. WILKINS, SUR. PART'R.

65 *Interrogatories to be propounded to Thomas C. Ellett, B. A. Ellett, Susan G. Ellett, Sally Puryear, and B. J. Ellett, witnesses on behalf of the plaintiff.*

Int. 1st. What is your age, place of residence, and occupation, and do you know the parties in this suit, or either of them, and which?

2nd. Are you of kin or connected to either of the parties, and, if so, to which, and how?

3. Have ever known one T. N. Quarles, of whom the plaintiff claims to be administrator? Is he dead or alive; and if dead, when did he die, and where; and where did he live immediately before his death?

4. Have you any interest in the estate of the said Quarles or not, and if so, what interest?

5. Did you know his parents; if so, where did they reside, and what became of them?

6. Did the father die before or after the mother, and when and where did he die; where did he reside at the birth of the said T. N. Quarles, and where at his death?

66 7 in. Did the mother marry or remain a widow? Where did she live after the death of her husband? If she changed her residence, where did she go, and how old was the said Quarles when she removed?

8. Did she or not establish a residence anywhere else, and what kind of a residence? Did she acquire or have any estate, and what kind and where.

9th. Do you know whether the said Quarles remained with his mother until his death, or did he leave her and go elsewhere to live? If so, when did he leave her and to what place did he go?

10. Have you any letters of his in your possession; if so, state if you

have had opportunity to know his handwriting, and what, and if you think you know it sufficiently to testify to it; and state if the letter you have is in his handwriting, and please to annex it to your deposition.

11. Have you ever read any letter from him which you have lost or not; if so, have you made search for it, and how? Have you any rec-
67 ollection of the substance of its contents and can you or not enclose the substance.

12. If you have read and lost any letter in which he speaks of his home, business place or purposes, please to state the substance of such letter as well as you can.

13. Have you or not ever heard him speak of his home, where he regarded it to be, his business, what kind it was, whether he expected to remain in it or to change; if the latter, where, and into what business did he expect to go, and did he ever speak of being permanently located, and where? State all you have heard him say on the subject as fully as you can.

14. Did you ever know, or did you ever hear, from the said Quarles, whether he had voted in any election within five or six years before his death; if yea, in what election, at what place, and how did he vote?

15th. Did you ever know or hear from him whether he ever paid poll-tax; and, if so, at what place, and when?

16th. Do you know any other matter or thing which may be useful or advantageous to either party to this suit.

68 (Endorsed): Semple Ellett, ad., vs. Jas. S. Wilkins. United States circuit court, Memphis. Interrogations to witnesses for plaintiff. Notice and informalities waived, subject only to exception for competency and relevancy.

We agree to cross-interrogate upon the foregoing interrogatories upon the following express conditions: That we will be permitted, on the filing of the depositions, to except to the leading character of the questions as effectually as if the objections were entered now, and also to the competency and relevancy of the same, or any part of any of the answers. This agreement will not be taken as an admission that the case was not finally disposed of in the supreme court. It is also part of this agreement that the witnesses are to be interrogated by some competent officer, and the depositions taken before him.

HUMES & POSTON,
Att's for Def't.

1st ques. Give the dates of the various letters you refer to, and to whom written.

2. X-ques. How long before his death did you see him?

3. X-ques. In giving the dates of the letters, specify what he said in each of them.

69 4. X-ques. State what you did in regard to the administration of Goodloe, at Courtland, Alabama, on Quarles' estate? Did you not insist upon and procure a settlement of that administration? Did you not receive a distribution share from it?

HUMES & POSTON,
Att'ys for Def't.

In the circuit court of the United States for the western dist. of Tennessee.

SEMPLE ELLETT, ADM'OR OF T. N. QUARLES, deceased, plaintiff,
against
JAMES S. WILKINS, SURVIVING PARTNER OF the firm of F. H. Clark & Co., def't.

The depositions of Thomas C. Ellett and Sally Puryear, taken before me, Wm. Josiah Leake, a notary public for the city of Richmond and county of Hanover, State of Virginia, duly commissioned and qualified in pursuance of the commission to me directed, and the stipulation of counsel hereto annexed, on the 16th of day of September, 1870, between the hours of nine a. m. and six p. m., at Chickahominy Swamp, Hanover County, Va., to be read as evidence in behalf of the plaintiff, in a certain suit in equity depending in the circuit court of the United States for the western district of Tennessee, wherein one Semple Ellett, administrator of T. N. Quarles is plaintiff, and James S. Wilkins,
70 surviving partner of the firm of F. H. Clark & Co., is defendant.

The interrogatories and cross-interrogatories propounded to the said witnesses are hereto annexed, being the same enclosed with the commission aforementioned to me as notary public as aforesaid.

No counsel for either party was present.

SALLY PURYEAR, a witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and says as follows, in answer to the several interrogatories:

To the first interrogatory-in-chief she says as follows, to wit: I am sixty years old; I have resided for the last twenty years at Courtland, Lawrence Co., Alabama, but about five months ago I left there and came to Virginia, where I now am. I know the plaintiff, but don't know the defendant.

To the 2nd interrogatory-in-chief she says: I am very distantly kin to the plaintiff; I am a cousin in about the third degree.

To the 3rd interrogatory-in-chief she says: I did know one Thos. N. Quarles, the same of whom plaintiff claims to be the administrator. He died about four years ago, about three miles from Courtland, Alabama, where I was at the time he died. Immediately before his
71 death he lived in Memphis, Tennessee. He left Courtland, or the neighborhood thereof, about fifteen years previous to his death and settled in Memphis, Tennessee. He never returned to Courtland, nor Lawrence County, Alabama, after he first left there, except on an occasional visit. He was on a visit to his former home when he died. He then only expected to remain for a few weeks, when he was to have returned to Memphis.

To the 4th interrogatory-in-chief, he says: I have no interest in his estate.

To the 5th interrogatory-in-chief she says: I never knew his father—never saw him; but I knew his mother well. She resided, when I knew her (during the time I resided in Lawrence County, Alabama), for the

greater part of the time about 3 miles from Courtland, with her brother, William Ellett, and for a short time she kept a boarding-house at Mountain Home, about seven miles from said Courtland. After her brother's death she resided a part of the time near Courtland, at his said place, and, I think, at Mountain Home for a part of the time. She died about the close of the war.

To the 6th interrogatory-in-chief she says: I cannot tell anything about that; I do not know.

72 To the 7th interrogatory-in-chief she says: She remained a widow, I know, to the day of her death. She lived, as I have stated, in Lawrence, Ala. I don't know how old he, T. N. Quarles, was when she moved to Alabama.

To the 8th interrogatory-in-chief she says: She had no residence since the year 1849 than what I have mentioned. She had no estate at all when I knew her, from 1849 to the time of her death, in 1864.

To the 9th interrogatory-in-chief she says: He left her about two or three years (after I left Virginia in 1849 and went to Mountain Home, Alabama), after I settled in Alabama, while she was living at Mountain Home, and went to live in Memphis, Tennessee, where he remained living until he died, as before stated.

To the 10th interrogatory-in-chief she says: I have no letter from him in my possession; but I know his handwriting. I have seen it. He wrote a very fine hand.

To the 11th interrogatory-in-chief she says: I never read any letter from him at all, that I remember.

73 To the 12th interrogatory-in-chief she says: I never saw any such letters.

To the 13th interrogatory-in-chief she says: The last time I saw him was in 1861 or 1862. I cannot now recall anything said in the conversation pertinent to the question; indeed I now recollect but one thing that he said, and that was his speaking of having been to Richmond, probably the year before, and we had some conversation about that place.

To the 14th interrogatory-in-chief she says: I never heard him say anything about voting, so far as I recollect.

To the 15th interrogatory-in-chief she says: I never did.

To the 16th interrogatory in chief she says: I know nothing else.

To the cross-interrogatories herewith filed she answers and says:

To the 1st cross-interrogatory she says: I have referred to no letters.

To the 2nd cross-interrogatory she says: About some four or five years, as well as I remember.

74 To the 3rd cross-interrogatory she says: I said nothing about any letters.

To the 4th cross-interrogatory she says: I did nothing of the sort; I never received a cent from his estate, and am entitled to nothing from it.

And further this witness saith not.

SALLIE PURYEAR.

THOMAS C. ELLETT, another of said witnesses, being carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith as follows, in answer to the several interrogatories-in-chief:

To the first interrogatory-in-chief he says that: My age is forty-five years;

I am a farmer, residing in Hanover County, Virginia; I know the plaintff; do not know the defendant.

To the 2nd interrogatory-in-chief he says that: I am nephew to the plaintiff; am not kin or connected to defendant.

To the 3rd interrogatory-in-chief he says that: I did know the said Quarles from his early childhood. He is now dead. He died, as
75 well as I remember, in 1866, near Courtland, Alabama. I have no personal knowledge about his death. He lived in Memphis, Tennessee, immediately previous to his death, or to the time he is said to have died, with the firm of F. H. Clark & Co.

To the 4th interrogatory-in-chief he says that: My father, who is dead, was entitled to $\frac{1}{3}$ of his, the said Quarles', estate; I would be entitled to $\frac{1}{4}$ of my father' share, after the payment of my father's debts.

To the 5th interrogatory-in-chief he says that: I did know both of his parents. When I first knew them, in 1835, they resided in King William Co., Va. In the year 1836 they moved to Richmond. The father of said Quarles then, in 1836, left for Texas, and I have always heard he died there. He was never heard of afterwards. In 1839 the mother of said Quarles moved out to Lawrence County, Alabama, near Courtland, to reside with her brother, William Ellett. She remained in that county until her death, in 1864, or thereabouts, except that she made several visits to Virginia, the last of which was in 1860.

To the 6th interrogatory-in-chief he says that: the father died first. He died, I believe, in Texas, about the year 1836. He resided in King
76 William Co., Va., at the birth of said Quarles, and he died before his said son.

To the 7th interrogatory-in-chief he says: she remained a widow. From 1836 to 1839 she lived in Richmond, Va.; she then changed her residence to the home of her brother, near Courtland, Alabama. The said Quarles was about four years old when she removed. I remember that well.

To the 8th interrogatory-in-chief he says that: she acquired no residence except that above mentioned, so far as I ever knew. I am certain she acquired no estate.

To the 9th interrogatory-in-chief he says that: I know he left her in 1851, and went to live in Memphis, Tennessee, with the firm of Clark & Co. I have heard him say so myself, and I know he lived there until about the time he died.

To the 10th interrogatory-in-chief he says that: I have none of his letters in my possession. I know his handwriting, because I have corresponded with him. All of his letters were dated in Memphis, Tennessee.

77 To the 11th interrogatory-in-chief he says: I have received a great many letters from him, but they are all lost. I suppose I lost them during the war. I have searched for them in vain. I remember the substance of the contents.

To the 12th interrogatory-in-chief he says that: in some of those letters or nearly all he was replying to inquiries I made of him, concerning the chances of getting business for me in Memphis. He urged me to come down there and go into business where he was living and doing business, and spoke in the highest terms of the city of Memphis. He said he was clerk in a jewelry store of F. H. Clark & Co., I think, or it may have

been Trueman & Clark; about this I am not absolutely certain, as to the name of the firm.

To the 13th interrogatory-in-chief he says that: when I saw him last, in 1860, he spoke of Memphis as his home and place of permanent residence, and I spoke of making visits to Alabama to see his mother and friends there. He spoke as if he expected to remain where he was with Clark & Co.

78 To the 14th interrogatory-in-chief he says that: I never heard him speak of voting at all.

To the 15th interrogatory in-chief-he says that: I never did.

To the 16th interrogatory-in-chief he says that: I do not, that I can think of.

In answer to the several cross-interrogatories he answers and says:

To the first cross-interrogatory: they were dated in 1851 & 1852, and were written to me.

To the 2nd cross-interrogatory: about five and a half years.

To the 3rd cross-interrogatory: I cannot, further than I have already done.

To the 4th cross-interrogatory he says that: I never was at Courtland, and know nothing about the matter. I received nothing from the said estate.

And further this witness saith not.

THOS. C. ELLETT.

79 STATE OF VIRGINIA,
County of Hanover, to wit:

I, Wm. Josiah Leake, a notary public for the county of Hanover and city of Richmond, State of Virginia, duly commissioned and qualified, to whom the annexed commission is directed, do hereby certify that the foregoing depositions were reduced to writing by me, sworn to and subscribed by the said Sally Puryear and the said Thomas C. Ellett at the time and place therein mentioned, and I do further certify that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand and official seal of office at the said county, this the 16th day of September, 1870.

[SEAL.] WM. JOSIAH LEAKE,
Notary Public.

(Endorsed:) No. 1145. Ellett, adm'r of Quarles vs. Wilkins, surviving partner, &c. Depositions for plaintiff. Filed Sept. 21st, 1870.

Plaintiff also read the depositions of E. F. Holman, W. A. Bates,
80 John Ellett, Semple Ellett, and A. R. Holladay, filed Sept. 17th, 1870, as follows:

UNITED STATES OF AMERICA,
District of West Tennessee:

To Wm. Josiah Leake, a notary public for the city of Richmond, State of Virginia.

Trusting in your fidelity and capacity to examine witnesses, you are

hereby authorized and empowered to cause Mrs. E. T. Holman, Mrs. Willie A. Bates, John Ellett, and Semple Ellett, and A. R. Holladay to come before you on the 12th day of September next, at your office No. 1114 Main st., Richmond, Virginia, and them diligently to examine, touching their knowledge of the matters in controversy in a cause now pending in the circuit court of the United States for said district, wherein Semple Ellett, administrator of T. N. Quarles, deceased, is plaintiff, and James S. Wilkins, surviving partner of the firm of F. H. Clark & Co., is defendant, said examination reduced to writing and signed by said witnesses to be read as evidence on behalf of the plaintiff on the trial of said cause, and the same duly certified under your hand and seal, to return with this writ to this office without delay.

81 Witness Abram S. Mitchell, clerk, and the seal of said court, at office in Memphis, this first day of September, A. D. 1870.

[SEAL.] A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

In the circuit court of the United States for the western district of Tennessee.

SEMPLE ELLETT, AD'R,
vs.
JAMES S. WILKINS, SUR. PART'R.

Interrogatories to be propounded to Mrs. E. F. Holman, W. A. Bates, and John Ellett, and Semple Ellett, and A. R. Holladay, witnesses in behalf of the plaintiff.

Inter. 1st. What is your age, place of residence, and occupation; and do you know the parties to this suit, or either of them, and which?

2nd. Are you of kin to either of the parties or connected with either and if so, to which one, and what kin or connection?

3. Do you or did you ever know one T. N. Quarles; and, if so, do you know where he now is, if alive; if dead, where did he die, and when, and with whom did he live immediately previous to his death, and is

82 the said Quarles, the person of whom the plaintiff claims to be administrator?

4. Are you of kin to the said Quarles, or connection; and, if so, what kin or connection, and have you any interest in the distribution of his estate; and, if so, what interest?

5. Did you know the parents of the said Quarles; and, if so, where did they reside, and what became of them?

6. Did the father of the said Quarles die before or after his wife, and where did he die; had he changed his residence or not after the birth of the said Quarles, and before his own death, or did he continue to reside at the same place?

7. After the death of the father the mother remain a widow or marry again; did she remain at the former residence or move away; if the latter, where did she go to; and when she moved was she a widow or married woman; and how old was the said Quarles at the time of her removal?

8. If you say she removed, state if she established a residence any-

83 where else or not; did she buy or own any estate at the place to which she removed, and what kind of estate and how long did she remain at this residence before she died?

9. Do you know where the said Quarles lived and what was his occupation at the time of his death, and how long had he lived there and in that occupation?

10. Did you or not ever correspond with the said Quarles; and, if so, have you or not any letters of his in your possession; if so, will you please to annex said letter or letters to this deposition, and state if you have had the opportunity to know the handwriting of the said Quarles, and what that opportunity was, and if you think you are competent to tell his handwriting, and state if the letter or letters so offered are or not in his handwriting?

11. If you have not such letter or letters, state if you have or not ever read any letter or letters which you know to be from the said Quarles, and if the same have been lost or mislaid; and if yea, have you or not searched for said letter or letters; and if you have not found them do you
84 remember the substance of their contents?

12. If you say you have ever rec'd such letter or letters and that they are lost and that you remember their contents substantially, state whether he made mention in any of them, and if more than one in how many of them, of his business, of where he had established his home, of what were his future plans or purposes.

13. If you answer the last interrogatory in the affirmative, please to state as closely as you can recollect what he said in the letter—that is, the substance. Did he or not state his occupation; whether he expected to remain in it or to make any change, and, if so, what; whether he expected to remain in the place of his then location or to remove, and if the latter, where; and did or not he state where he regarded his permanent residence and home, and, if so, where? State all his language in said letter or letters as near as you can and the date or about thereof of the said letter or letters.

14. Have you at any time within three or four years previous to
85 the death of the said Quarles had any conversation with him about his home, residence, place of abode, or business, or his plans and purposes; if yea, when and where?

15. In such conversation did he or not state where he regarded his home; whether he had any fixed or permanent residence; and, if so, where? What did he say were his avocations or business and his intentions about the same? State as nearly and as fully as you can all he said about the matters refer'ed to.

16. Did you ever know or did you ever hear from the said Quarles whether he had voted in any election within four or five years before his death; and, if so, in what election, at what place or places, and for whom?

17. Did you ever know or hear from him whether he paid poll or other tax; and, if so, which and what kind of tax, and in what place was the said tax paid?

18. Do you know any other matter or thing which may be useful or advantage to either party to suit? If so, state it.

86 We agree to cross-interrogate upon the foregoing interrogatories upon the express condition that we will be permitted, on the filing

of the depositions, to except to the leading character of the questions as effectually as if the objections were entered now, and also to the competency and relevancy of the same, or any part of any of the answers. This agreement is also not to be taken as an admission that the case was not fully disposed of in the Supreme Court. We further insist, as a part of this agreement, that the witnesses are to be interrogated by some competent officer, and the depositions taken before him.

HUMES & POSTON,
Att'ys for Def't.

1. X-ques. Give the dates of the various letters you refer to, and to whom were they written.
2. X-ques. How long before his death did you see him?
3. X-ques. In giving the dates of the letters specify what he said in each of them.

87 4. X-ques. State what you did in regard to the administration of Goodloe, at Courtland, Alabama, on Quarles' estate. Did you not insist upon and procure a settlement of that administration; did you not receive a distributive share from it?

HUMES & POSTON,
Att'y' for Def't.

(Endorsed:) Semple Ellett, ad., vs. James S. Wilkins. United States circuit court, Memphis. Interrogatories to witnesses for plaintiff. Notice and informalities waived subject to exceptions only for competency and relevancy.

In the circuit court of the United States for the western district of Tennessee.

SEMPLE ELLETT, ADM'OR, &C.,)
vs.)
JAMES S. WILKINS, SURVIVING PARTNER.)

The depositions of Mrs. E. F. Holman, W. A. Bates, John Ellett, Semple Ellett, and A. R. Holladay, taken before me, Wm. Josiah Leake, a notary public for the city of Richmond, State of Virginia, duly commissioned and qualified, pursuant to the commission hereto annexed, and pursuant to the stipulation of counsel endorsed upon the in-
88 terro'atories and cross-interrogatories hereto annexed, at my, the said notary's office, No. 1114 Main st., in the city of Richmond, on the 12th day of September, 1870, to be read as evidence on behalf of the plaintiff in a certain suit or action now pending in the circuit court of the United States for the western district of Tennessee, wherein Semple Ellett, administrator of Thomas N. Quarles, is plaintiff, and James S. Wilkins, surviving of himself and others, partners, under the name & style of F. H. Clark & Co., defendants.

ALEXANDER R. HOLLADAY, a witness of lawful age, being first duly sworn on the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, answers and deposes as follows:

In answer to the 1st interrogatory-in-chief he answers as follows: I am

over fifty years of age; my place of residence is in the county of Henrico, on the edge of the city of Richmond, Virginia, and my occupation is that of a lawyer and a farmer. The only party to this suit whom I know is Mr. Semple Ellett, the plaintiff.

In answer to 2nd interrogatory-in-chief he answers as follows:
89 I am not of kin to either of the parties, but my wife is a cousin of half blood to the wife of Semple Ellett.

In answer to the 3rd interrogatory-in-chief he answers as follows: I never knew T. N. Quarles; I have seen letters purporting to be signed by T. N. Quarles, and dated at Memphis, Tennessee, which letters were exhibited to me by Semple Ellett in consultation with me as a lawyer. In those letters, the date of which I am not able to state, he spoke of Memphis as "our city;" he recommended it as an eligible city for a young man to go to engage in business, as a growing place, and the whole tenor of the letter, the precise language of which it is impossible for me to remember, implied unquestionably that he was residing and doing business there. I do not know whether he is dead or alive, or if dead where he died, but those letters impressed upon my mind the conviction that a short time before I heard of his death he was living and doing business at Memphis.

In answer to the 4th interrogatory-in-chief he answers and says: I am not of kin to the said Quarles, so far as I know, and have no interest in the distribution of his estate.

In answer to the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th,
90 14th, 15th, 16th, 17th, and 18th interrogatories-in-chief he answers and says as follows: I have no information whatsoever as to the subjects mentioned; all that I know of the said T. N. Quarles has already been stated in answer to previous questions.

In answer to the cross-interrogatories the witness says as follows:

To first cross-interrogatory. The letters to which I have referred were addressed to Semple Ellett, but their dates I do not remember, as previously stated.

To 2nd X-interrogatory. I never saw him in my life.

To the 3rd & 4th cross-interrogatories the witness says: I can say no more about the letters than I have already stated. I have no personal knowledge about the administration at Courtland.

And further this deponent saith not.

ALEX. R. HOLLADAY.

SEMPLE ELLETT, another witness of lawful age, being introduced before me, being first duly sworn on the Holy Evangelist of Almighty God, deposes and saith in answer to the interrogatories and cross-interrogatories
91 hereto annexed as follows, to wit:

To first interrogatory he says as follows: My age is fifty-five; I reside in Hanover County, Va.; my occupation is that of farmer; I am the party plaintiff to this suit, and I know the defendant by sight.

To the 2nd interrogatory. I am the party plaintiff.

To the 3rd interrogatory. I did know T. N. Quarles during his whole life. He is now dead. He died on the 24th January, 1866, in Lawrence County, Alabama. Immediately previous to his death he lived in Memphis, Tennessee, with F. H. Clark & Co. The said T. N. Quarles is the person of whom the (said witness) plaintiff claims to be administrator.

To the 4th interrogatory. I am an uncle on his mother's side of the said T. N. Quarles. I am interested in the distribution of his estate, and am entitled to ⅛ of the distributive portion of his estate.

To the 5th interrogatory. I was well acquainted with both of the parents of said Quarles. His mother was my sister. They resided in King William County, Virginia, for a short while, then in Richmond, Virginia.

92 His father left Virginia in 1836 and went to Texas, and there died in a short time in same year. His mother remained in Richmond until the fall of 1839, then she went to Alabama with her brother and lived there with him until 1864, when she died; her brother died in 1861, but she remained with his family until her death.

To the 6th interrogatory. The father of said Quarles died before his wife. He died in Texas in 1836. He, the young man, was born in Virginia, after which his father changed his residence, as before stated.

To the 7th interrogatory. The mother of said Quarles remained a widow. She remained in Virginia for 3 years after her husband's death, then she removed to Alabama. She was a widow when she removed, and the said Quarles was about four years old when she left Virginia for Alabama.

To the 8th interrogatory. She established a residence with her brother in Lawrence County, Alabama. She remained with her brother until his death in 1861, and at his residence with his family until her death in 1864. She did not buy or own any estate at the place to which she removed.

To the 9th interrogatory. He was living in Memphis at the time of his death, and was employed or occupied as a clerk in the house of F.

93 H. Clark & Co. He had lived in Memphis from the year 1851 to the time of his death in 1866, and was living with the said firm the whole of that time.

To the 10th interrogatory. I have corresponded with him. I have none of such letters in my possession now. I am well acquainted with the handwriting of said Quarles; I have seen him write very often and have received letters from him. I am entirely competent to tell his handwriting. I have in my possession a letter written by him which was not written to me, but I know it is his handwriting. The said letter is addressed to George M. Carleton, and is dated Memphis, March 8th, 1864. The endorsement thereon in red ink is not in his handwriting. (The said letter is hereto annexed, marked Exhibit A, and is to be considered as a part of this answer.)

To the 11th interrogatory. I had four letters which I received from T. N. Quarles, and which I knew were in his handwriting, all dated Memphis, but I cannot remember their dates; I think, as well as my memory serves me, that the date of the last was about the commencement of the war. On the 22nd day of *of* April, 1869, I enclosed said letters

94 in an envelope directed to my counsel, Colonel D. K. McCrae, Memphis, Tennessee, and deposited them in the post-office at Ashland, Virginia. I have never heard from the said letters, although I have sought for all information in my power in regard to them, and suppose they were lost in the mail. I remember the substance of the contents of the last letter particularly. In that letter he urged me to sell out in Virginia and to move out to Memphis or near there in order that I might be near him. He spoke of Memphis as "our city," using those words; that the city was growing in wealth & population. Accompanying said letter

was one of the daily papers printed in Memphis, in which a large body of land was advertised for sale which he desired me to come out and buy. (The tenor of all the said letters showed plainly that he considered Memphis as his home.) He, in fact, had no other home.

To the 12th interrogatory. (I cannot remember in regard to the points mentioned, but the whole tenor of his letters went to show that such was his home & that his business was there, and that his future prospects were all there.)

95 To the 13th interrogatory. In his said letters he stated that he expected to remain in Memphis in his then business, and that he had no idea of leaving there or changing his location, but I cannot remember his exact language in those letters. He stated that he regarded Memphis as his permanent home, and advised me to leave Virginia and settle near there.

To the 14th interrogatory. From June to last of August, 1860, he was on a visit to my house, when we had long conversations in regard to his future plans. He then called Memphis his home. He wanted me to go out there and go in business with F. H. Clark & Co., and expected to remain with them unless he went into business by himself.

To the 15th interrogatory. In such conversations he stated what I said above. He said Memphis was his home, and permanent one; and that he expected to remain in business there with F. H. Clark & Co. unless he should open business on his own account. I did not see T. N. Quarles after the breaking out of the late war, that event having interrupted our intercourse.

To the 16th interrogatory. When he was at my house in 1860 he spoke of having voted in the municipal elections at Memphis, Ten-

96 nessee; but I do not know who he voted for. I never saw him after that time.

To the 17th interrogatory. I did not hear him say anything about Texas.

To the 18th interrogatory. In June, 1866, I was in Memphis, Tennessee, and saw James S. Wilkins, the defendant in this suit, and had a conversation with him, in which he stated that Thomas N. Quarles rented a room in Memphis, and was occupying the same up to the time of his death; and that said room was well furnished with furniture belonging to said Quarles; and that he, said Wilkins, or one Alefick, delivered the key of said room to William Goodloe, who claimed to be the administrator of said Quarles; and he further stated that said Goodloe shipped the said furniture to Courtland, Alabama. I afterwards saw this furniture in Courtland, Alabama, in Goodloe's possession; and I had the property aforesaid turned over to the administrator in Alabama, who sold it in November, 1866.

The paper which I now file with my answer, marked Exhibit B was handed me by the defendant Wilkins in June, 1866. He stated that the said paper showed the amount due to said T. N. Quarles by the concern of F. H. Clark & Co. at the time of said Quarles' death.

97 To the cross-interrogatories hereto annexed, he answers and says as follows:

To the 1st X-interrogatory. I have answered this interrogatory as well as I can in my answers before given.

To the 2nd cross-interrogatory. I saw him about the last of August or 1st September, in the year 1860; he died in 1866.

To the 3rd X-interrogatory. I have answered this interrogatory as fully as I can in the former part of my examination.

To the 4th cross-interrogatoy. All I did in Courtland, Alabama, was to ask to have the administration of Goodloe upon the estate of said Quarles set aside. I did not insist upon or procure a settlement of Goodloe's administration, nor did I receive anything from Goodloe. The furniture and some jewelry belonging to the estate of said Quarles came into the hands of one Masterton, the county administrator. The said Masterton sold the said property and I bought some of it and I received the amount of my bill from said Masterton, that amounted to ($475) four hundred and seventy-five dollars, and I gave Masterton a receipt for that amount of furniture and jewelry.

And further this deponent saith not.

SEMPLE ELLETT.

98 Mrs. WILLIE A. BATES, a witness of lawful age, being duly sworn on the Holy Evangelists of Almighty God, deposes and says as follows, in answer to the interrogatories and cross-interrogatories, *as follows:*

To the 1st interrogatory. I am twenty-five years of age, and keep house for my husband in the city of Richmond, Virginia. I know the plaintiff, but do not know the defendant.

To the 2nd interrogatory. The plaintiff is my uncle, the defendant no kin nor connection.

To the 3rd interrogatory. I did know T. N. Quarles. He is now dead; he died in Alabama in 1866. He lived with F. H. Clark & Co., just before his death—I mean in Memphis, Tennessee. He is the same person of whom the plaintiff claims to be administrator.

To the 4th interrogatory. I am first cousin to said Quarles. I have no interest in the distribution of his estate, except a contingent one. My father had an interest and has conveyed it to his children, of whom I am one. My interest is, therefore, one-sixth interest.

To the 5th interrogatory. I knew the mother of said Quarles; she resided, when I knew her, in Lawrence Co., Alabama. She died several years ago. I never knew his father.

To the 6th interrogatory. I have no knowledge about the subject.

99 To the 7th interrogatory. She remained a widow until her death. I do not know anything further of my own knowledge.

To the 8th interrogatory. I know nothing about the matter.

To the 9th interrogatory. He was living in Memphis, in Clark's jewelry establishment. He told me when he was here in 1860 that he was living in Memphis with F. H. Clark & Co., and he lived there until he died, so far as I know.

To the 10th interrogatory. I have had correspondence with said Quarles, but have none of his letters in my possession. I know his handwriting, & have seen him write. I have destroyed all the letters I ever received from him.

To the 11th interrogatory. I have received such letters from him dated in Memphis. These letters spoke of Memphis as his home, and in one

written from Richmond he spoke of going home to Memphis where he lived and did business; further than that I cannot remember the contents, except as to trivial matters in no way connected with this suit.

To the 12th, 13th, 14th, 15th, 16th, & 17th interrogatories the witness says as follows: I know nothing except that the letters related to
100 domestic and friendly matters in no way connected with this suit, and that from the general tenor thereof I understood and gathered that Memphis was his home, and that he was doing business there.

To the 18th interrogatory. I know nothing else.

To the cross-interrogatories herewith filed she says as follows:

To the 1st cross-interrogatory. The letters I refer to were written to me, dated Memphis, 1860, and one in Richmond the same year.

To the 2nd cross-interrogatory. About 5 or six years. It was in 1860.

To the 3rd cross-interrogatory. I cannot farther than already stated.

To the 4th cross-interrogatory. I know nothing about the matter referred to in the question.

And further this deponent saith not.

WILLIE A. BATES.

EVALENA F. HOLMAN, another witness of lawful age, being first duly sworn on the Holy Evangelists of Almighty God, deposes and says, in answer to the interrogatories and cross-interrogatories hereto annexed as follows, to wit:

To the 1st interrogatory. My age is sixty-three years. I live
101 in Richmond, and I know the plaintiff; don't know the defendant.

To the 2nd interrogatory. I am very distantly related to the plaintiff.

To the 3rd interrogatory. I did know Thos. N. Quarles. I do not know, but I have heard he was dead. I understood he died in Alabama in 1866. He lived in Memphis, Tennessee, with the firm of F. H. Clark & Co. He is the same person of whom the plaintiff claims to be administrator.

To the 4th interrogatory. I was distantly related to him & have no interest in his estate.

To the 5th interrogatory. I knew his mother but not his father. She resided in Richmond when I knew her, in about 1835, but I am not sure of the time. She moved to Alabama a short time afterwards and resided with her brother.

To the 6th interrogatory. I knew nothing about it at all except what I have heard.

To the 7th interrogatory. She remained a widow. She left here and went to Alabama to live with her brother. She was a widow when she left here. Her son was then four or five years old.

To the 8th interrogatory. I do not know anything about the subject beyond what stated above.

102 To the 9th interrogatory. I know that in the year 1860 he lived in Memphis, Tennessee, with F. H. Clark & Co. as a clerk, because he told me so himself. I never saw him afterwards.

To the 10th interrogatory. I have received letters from him and corresponded with him, but I have none of those letters now. I have searched

diligently for them and cannot find them. I think I know his handwriting.

To the 11th interrogatory. I have lost said letters and cannot find them. They were from the said Quarles; were dated at Memphis, Tennessee, and related to a claim which we were both interested in, in regard to some claim in England, and that subject was the principal one about which he wrote.

To the 12th interrogatory. He mentioned nothing of the kind.

To the 13th interrogatory. He said nothing about the matter referred to. I know that all the letters received from him were dated in Memphis. I know I received one letter from him after the war, and that letter was dated in Memphis, Tennessee. The other dates I cannot re-
103 member, but they were all subsequent to the year 1860; the last was dated but a short time before his death.

To the 14th interrogatory. I did not later than 1860, when I saw him last. He then spoke of Memphis as his home, and spoke of being highly pleased with his home, and said nothing about moving away, but said he lived with F. H. Clark & Co. as their clerk. This was in Richmond.

To the 15th interrogatory. I have answered this as fully as I can in my previous answer.

To the 16th interrogatory. I know nothing about the matter,

To the 17th interrogatory. I heard him say nothing about Texas.

To the 18th interrogatory. Nothing that I am aware of beyond what I have stated.

In answer to the cross-interrogatories she says as follows, to wit:

To the 1st cross-interrogatory. I cannot, farther than I have, give the exact dates they were written to me.

To the 2nd cross-interrogatory. In the year 1860 I saw him last.

To the 3rd X-interrogatory. I cannot farther than I have done.

To the 4th cross-interrogatory. I did nothing of the sort. Had nothing to do with it.

And further this deponent saith not.

EVELINA F. HOLMAN.

104 JOHN ELLETT, another witness of lawful age, being produced before me, in answer to the interrogatories and cross-interrogatories herewith filed, answers and says, he having been first duly sworn on the Holy Evangelists, and then admonished.

To the interrogatories he says as follows:

To the 1st interrogatory he says. I am sixty years old. I reside in Richmond, Virginia. My occupation is that of a housekeeper. I know the party plaintiff, and do not know the defendant.

To the 2nd interrogatory he says. I am a brother of the plaintiff, but am not connected with the defendant in any way.

To the 3rd interrogatory he says. I did know Thos. N. Quarles during his life from childhood to his death, which occurred in 1866, in Lawrence County, Alabama. Immediately previous to his death he lived in the city of Memphis, Tennessee, with the firm of F. H. Clark & Co. The said T. N. Quarles is the same person of whom the plaintiff claims to be administrator.

To the 4th interrogatory he says. I am the maternal uncle of
105 the said T. N. Quarles. I am not interested in his estate, having parted with my interest therein.

To the 5th interrogatory he says: I knew both of them. I knew his mother from childhood. She was my sister. They resided after marriage in King Wm. Co., Va., and afterward in Richmond, Virginia. In the year 1836 the father of said Quarles left Virginia, went to Texas, and there died in a short time, I think in the same year. His mother remained here in Richmond, Va., until 1839, when she went to Alabama to live with her brother, William Ellett. She remained there until his death in 1861, and then at his old place until 1864, when she died.

To the 6th interrogatory. Thos. N. Quarles was born in King William County, Virginia, before his father left there. I have answered the rest of the question.

To the 7th interrogatory. She remained a widow until her death. About 3 years after her husband's death she moved to Alabama, as before stated. The said T. N. Quarles was then about four years old.

106 To the 8th interrogatory. She moved to Alabama in 1839, and lived with a brother there. She neither bought nor owned any estate there; and she lived there and made her brother's her home from that time till she died, in 1864.

To the 9th interrogatory. He lived in Memphis, Tennessee, with the firm of F. H. Clark & Co., as a clerk. He had been there for about fifteen years in that business.

To the 10th interrogatory. I did not correspond with *with* him, but I received a letter from him. I have not any letter from him in my possession. I know his handwriting well. I have seen him write, and thus know his handwriting; and I am fully competent to tell his writing.

To the 11th interrogatory. I have received a letter from him dated Memphis, which I knew to be from him. I have diligently search' for it, but can't find it. I remember the substance of the same, in part, at least.

To the 12th interrogatory. In that letter he stated that he had received a letter from his mother, who lived in Alabama. I do not think he said anything about his home, business, nor plans.

107 To the 13th interrogatory. The said letter was dated Memphis, Tennessee, in the month of July, 1861. He said nothing about the matters in the question so far as I remember.

To the 14th interrogatory. I last saw him in year 1860, and conversed with him then, when he constantly spoke of Memphis as his home and place of business, and spoke of remaining there, and earnestly desired that I should go there too. This was at my house in Hanover County, Va.

To the 15th interrogatory. He stated he was in business with F. H. Clark & Co., as a clerk; that the said firm was one of the most flourshing in Memphis, and spoke of Memphis as his permanent place of abode.

To the 16th interrogatory. I don't remember his saying anything of the kind when I saw him.

To the 17th interrogatory. I heard him say nothing about the matter of taxes.

To the 18th interrogotory. I saw all of the letters referred to the witness Semple Ellettt in his depositions. I know they were from T. N.

Quarles, and that their contents were substantially such as sta-
108 ted in the deposition of Semple Ellett, and that they were in the handwriting of said T. N. Quarles, dated at Memphis, Tennessee, and I think he has correctly stated their dates. I also saw the letter which Mrs. E. F. Holman received from said Quarles in his handwriting, dated since the war, and the contents were substantially such as she stated. That letter was also dated in Memphis Tennessee.

Cross-examination:

In answer the cross-interrogatories herewith filed, he says:

To the 1st cross-interrogatory. I have done so to the best of my recollection

To the 2nd cross-interrogatory. About 5½ years.

To the 3rd cross-interrogatory. I have, as nearly as I can.

To the 4th cross-interrogatory. I did nothing; I was never in Alabama.

And further this deponent saith not.

JOHN ELLETT.

EXHIBIT A.

MEMPHIS, *M'ch 8th*, '64.

GEO. M. CARLETON, Esq'r:

D'R SIR: I wish to obtain for my mother, Mrs. L. D. Quarles,
109 her sister & niece (of which I am the only male representative), a permit to ship up the Tennessee River to Courtland, Ala.; the goods are for family use; they have not been able to get supplies for more than two years, & therefore the permit will be quite large.

Yours, very respectfully,

T. N. QUARLES.

To the surveyor of customs at Paducah, Ky.:

SIR: I have been personally acquainted with the writer of this note for several years, and take great pleasure in testifying to his loyalty and integrity, and most respectfully recommend that the goods I have permitted him to ship to Paducah may be permitted to their destination at Courtland, Alabama, provided it would not be in contravention of the Treasury regulations governing trade in that district. I likewise know the facts set forth by the petitioner are in every respect true, and earnestly commend the case to your kind consideration.

G. N. CARLETON,
Surveyor of Customs.

(Endorsed:) Semple Ellett, adm'or, vs. James S. Wilkins, surv. part-
110 ner. Exhibit A, filed with deposition of S. Ellett, in answer to 10th interrogatory-in-chief.

EXHIBIT B.—COPY OF %.

MEMPHIS, TENN., *January*, 1866.

T. N. Quarles, in % with F. H. Clark & Co.

Jan'y	4, '66.	To cash.....	$225 00
"	5. " " "	.....	75

"	"	"	d. b. shot-gun	100	
"	"	"	s. p. & p. flask	6	
"	"	"	1 gold guard chain	10	
"	31.	"	cash p'd Goodloe	1,000	
"	"	"	" " Afflick	75	
"	"	"	" " Dr. E A. W. White	341	
Feb'y	21,	"	" " Goodloe	2,455	22
				$4,287	22
Jan.	1.	By balance a/c		3,278	78
"	3.	" cash		1,000	
Feb'y	21.	" interest		8	44
				$4,287	22

(Endorsed:) Semple Ellett, adm'r, vs. James S. Wilkins, surv'g partner. Exhibit B, filed with deposition of Semple Ellett.

STATE OF VIRGINIA:
City of Richmond, to wit:

111 I, Wm. Josiah Leake, a notary public for the city of Richmond and county of Hanover, State of Virginia, duly commissioned and qualified, do certify that the foregoing depositions (upon the interrogatories and cross-interrogatories herewith filed and hereto annexed) of Alexander R. Holladay, Semple Ellett, Willie A. Bates, E. F. Holman, and John Ellett, pursuant to the commission hereto annexed, were duly taken by me, reduced to writing, sworn to by said witnesses, and by them signed at my office in the city of Richmond, Virginia, on this the 12th day of September, 1870. In testimony whereof I, the said notary, have hereto set my hand and affixed my notarial seal of office at Richmond, this 12th day of September, in the year 1870.

[SEAL.]

[SEAL.]

WM. JOSIAH LEAKE,
Notary Public.

Fee, $10; charged to the plaintiff. W. J. L.

(Endorsed:) No. 1145. In the circuit court of the United States for the western dist. of Tennessee. Semple Ellett, adm'r, vs. James S. Wilkins, surviving partner. Depositions for plaintiff. Filed Sept. 17th, 1870.

112 Also deposition of R. T. Ellett, as follows:

UNITED STATES OF AMERICA,
District of West Tennessee:

To John Gardner, notary public, Montgomery Co., Va.:

Trusting in your fidelity and capacity to examine witnesses, you are hereby authorized and empowered to cause Robert T. Ellett to come before you, on the 3rd day of October next, at Christiansburg, Va., and him diligently to examine touching his knowledge of the matters in controversy in a cause now pending in the circuit court of the United States for said district, wherein Semple Ellett, adm'r, plaintiff, and James S. Wilkins, sur. partner, defendant, said examination, reduced to writing and signed by said witness,

to be read as evidence on behalf of said Ellett on the trial of said cause; and the same duly certified under your hand and seal, to return, with this writ, to this office without delay.

Witness, Abram S. Mitchell, clerk, and the seal of said court, at office in Memphis, this day of , A. D. 18 .

A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

113 In the circuit court of the United States for the western district of Tennessee.

SEMPLE ELLETT, AD'R,
vs.
JAMES S. WILKINS, SUR. PART.

Interrogatories to be propounded to Dr. R. T. Ellett, a witness on behalf of the plaintiff.

Int. 1st. What is your age, occupation, and residence, and do you know the parties to this suit, or either, and which?

2. Are you of kin to, or connected with either, and how, and have you any interest in this suit?

3. Did you know T. N. Quarles; is he dead or alive; if dead, when did he die, and where did he live at the time of his death?

4. Did you know the parents of Quarles; where did they live; which survived?

5. If the mother survived, did she marry or remain a widow; did she continue to remain at the same place or move away; if the latter, where did she go; how old was the said Quarles when she
114 moved; and did she acquire a residence at the place to which she moved?

26. Did the said Quarles remain with his mother until his death; if not, when did he leave her; what was his age; then where did he go to?

7. Have you any letter which you know to be from the said Quarles in your possession; if so, file it with your deposition.

8. If you have ever rec'd a letter from him and lost it, have you searched for it, and do you know its contents sufficiently to speak of them?

9. If he ever mentioned in such letter where he regarded his home; what was his business, and his plans and purposes, state as fully as you can all he wrote upon these subjects.

10. Did you ever have any conversation with him about those matters; if so, state all he said, and especially if he said where his home was; whether he regarded himself as permanently located at any place,
115 and where, or whether he contemplated removing or returning to any other place.

12. Do you know, or did you ever hear him say whether he voted; and, yea, where, and in what election?

13. Did you ever hear him say whether he paid poll-tax; and, if yea, where and when?

14. Do you know any other matter or thing useful or advantageous to either party to this suit?

Def't's counsel object to the 8th, 9th, 10th, 12th, & 13th interrogato-

ries, because they are leading, and suggest the answer desired by the interrogator, and by agreement the objections are reserved for the decision of the court at the trial.

Cross-examination waived.

HUMES & POSTON,
Att's for Def't.

(Endorsed:) Semple Ellett, ad., vs. Jas. S. Wilkins. Circuit court of United States, Memphis. Interrogatories to witnesses for plaintiff. Notice and informalities waived, subject only to exceptions for comptency and relevancy.

116 I, John Gardner, a notary public in and for the county of Montgomery and State of Virginia, do certify that, pursuant to the commission issued by the district court of the United States for the western district of Tennessee, and addressed to me and hereto annexed, I have, on this 3rd day of October, 1870, at my office, in the town of Christiansburg, in said county, caused Robert T. Ellett to come before me on this day, and have examined the said Ellett on oath touching his knowledge of the matters in controversy in a cause new pending in the circuit court of the United States for said western district of Tennessee, wherein Semple Ellett is plaintiff & James S. Wilkins, surviving partner, is defendant.

Robert T. Ellett, being by me duly sworn, deposeth & sayeth in answer to the written interrogatories propounded by the plaintiff, and which interrogatories are hereto annexed:

1. To the 1st question the witness says: His occupation is a physician; his residence, Central Depot, Montgomery County, Va. I know the plaintiff, Semple Ellett.

117 2. To the 2nd question the witness says: I am a nephew of Semple Ellett. I have an interest, through my father, Robert Ellett, dec'd.

3. To the third question the witness says: I knew T. N. Quarles well; he was an old school-mate; now dead. He died in the State of Alabama. He resided in Memphis, Tenn., but was on a visit to his uncle's residence, near Courtland, Ala., which was in the year 1865, or early in the year 1866. Said to be accidentally shot while duck hunting.

4. To the fourth question the witness says: I knew Quarles' mother. She died some before his (T. N. Quarles') death. His father died when he was an infant. His mother had no fixed residence; she resided part of the time in Alabama and part with her brothers in Virginia. She owned no real estate.

5. To the fifth question the witness says: The mother did not survive him. She never married a second time. She resided as stated in prev'ous answer. She spent the greater part of her time with her brother, William Ellett, near Courtland, Ala.

118 6. To the sixth question the witness answers: Quarles left his mother and went into business in Memphis some time in 1854 or 1855, or about that time. I think his mother at that time was in Alabama. He was about 18 or 20 years of age at the time.

7. To the seventh question the witness answers: I have no letter at

this time; all lost in the confusion of the war. We were correspondents for years.

8. To the eight' question the witness answers: I can only state that in one of his last letters, now lost, he earnestly urged me to come to Memphis to live, giving a glowing description of the place & how he was pleased.

9. In answer to the ninth question witness says: He regarded Memphis as his home. He was in business with Wilkins & some other party not distinctly recollected, but my impression his name was Clark; I do not know whether he was a partner or clerk. I have rec'd no letters from him since before the war. He spoke freely of intending to go into speculating in cotton.

119 10. In answer to the tenth question he says: The last conversation I had with him at Old Point, in Va., the exact date of which is not remembered, but it was while the steamer Great Eastern was lying in Norfolk Harbor, as we visited the steamer together. During this visit he urged me to go with him to Memphis. (I considered from all he said that Memphis was his home.) I never heard him say that he had any intention of a change of residence. He registered at the hotel as of Memphis.

Numbered 12. In answer to question numbered 12 he says: He wrote me, after this visit, that he intended to vote for Breckenridge. I never heard him say how he voted.

13. In answer to question 13 he says: I have never heard him say anything about paying poll tax.

14. In answer to question 14 says: Robert Bowles, of Memphis, Tenn., who was with him on this visit, and Young Thompson, son of Jeff. Thompson, Sec't'y of the Interior, who was also with him, can corroborate what I have stated in above answers, & perhaps can give other evidence not known to me. I do not know their present residence. They were from Memphis at that time.

120

ROBERT T. ELLETT.

I, John Gardner, a notary public as aforesaid, do certify that by virtue of the authority conferred upon me by the commission aforesaid, the above deposition was this day taken, sworn to, and subscribed before me, at the time & place mentioned in the caption.

In testimony I have hereunto set my hand and affixed the seal of my office this 3rd day of October, 1870.

[SEAL.] JOHN GARDNER.

Notary's fee, $3.00; ch'g' to plaintiff.

(Endorsed:) No. 1145. Semple Ellett, adm'r vs. James S. Wilkins, s. p. Deposition. Filed Oct. 8, 1870.

Also deposition of Edmonia J. McNeal, as follows:

UNITED STATES OF AMERICA,
District of West Tennessee:

To Henry C. Connelly, notary public, Rock Island, Ill's:

121 Trusting in your fidelity and capacity to examine witnesses, you

are hereby authorized and empowered to cause Edmonia J. McNeal to come before you, on the 5th day of October next, at nine o'clock a. m., and her diligently to examine touching her knowledge of the matters in controversy, in a cause now pending in the circuit court of the United States for said district, wherein Semple Ellett, adm'r, is plaintiff and James S. Wilkins, surviving partner, &c., is defendant; said examination, reduced to writing and signed by said witness, to be read as evidence on behalf of plaintiff on the trial of said cause; and the same duly certified under your hand and seal, to return with this writ to this office without delay.

Witness Abram S. Mitchell, clerk, and the seal of said court, at office in Memphis, this day of , A. D. 18 .

[SEAL.]

A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

In the circuit court of the United States for the district of West Tennessee.

SEMPLE ELLETT, AD'R,
vs.
JAMES S. WILKINS, SUR. PART'R.

Interrogatories to be propounded to Mrs. Edmonia J. McNeal, a witness in behalf of the plaintiff.

122 Int. 1st. What is your residence, age, and occupation; and do you know the parties to this suit, or either of them?

2. Did you know Thos. N. Quarles? Are you any relation of Semple Ellett or of Quarles?

3. Where and when did said Quarles die, or is he yet alive?

4. Were you or not on intimate terms with him; and, if so, where did he live at the time of his death? How long did he live there previous to his death? Do you know where he removed from to his last place of residence, and when?

5. Have you any letters of his in your possession? Do you know his handwriting? Will you please file such letter with your deposition, and state whether it is in his handwriting?

6. Have you ever read any letter from him which you have lost or not? and, if so, state whether he made mention in such letter of his home, where he regarded it to be; of his business, whether he was permanently or temporarily engaged; of his future purposes; if he intended to remain in his present residence; if there was any home 123 he intended to go to. State as closely as you can the substance of such letter.

7. Did you ever have any conversation with him on the matters of the last interrogatory? And, if so, state all he said, as far as you can.

8. Do you know whether he at any time advise' any of his relations to change their residence to his; and, if so, where did he then state his home and residence to be, and where did he advise them to go to be near to him?

9. Did you ever hear him say where he voted and paid his taxes; and, if so, where and when?

10. Do you know any other matter or thing which may be of advantage to either party in this suit?

(Endorsed:) Semple Ellett, ad., vs. Jas. S. Wilkins. United States circuit court. Memphis. Interrogatories to witness for plaintiff. Notice and informalities waived, subject only to exception for competency and relevancy.

124 We agree to cross-interrogate upon the foregoing interrogatories upon the following express conditions: That we will be permitted on the filing of the depositions, to except to the leading character of the questions as effectually as if the objections were entered now, and also to the competency & relevancy of the same, or any part of any of the answers.

This agreement will not be taken as an admission that the case was not finally disposed of in the supreme court. It is also part of this agreement that the witnesses are to be interrogated by some competent officer, and the depositions taken before him.

HUMES & POSTON,
Att's for Def't.

1st X-ques. Give the date of the various letters you refer to, and to whom written.

2nd X-ques. How long before his death did you see him?

3rd X-ques. In giving the dates of the letters specify what he said in each of them.

4th X-ques. State what you did in regard to the administration of Goodloe, at Courtland, Alabama, on Quarles estate. Did you not insist upon and procure a settlement of that administration? Did you not receive a distributive share from it?

HUMES & POSTON,
Att'ys for Def't.

125 In the circuit court of the United States for the circuit of West Tennessee.

SEMPLE ELLETT, ADM'R,
vs.
JAMES WILKINS, SURVIVING PARTNER, &C.

Deposition of Edmonia J. McNeal, a witness produced, sworn, and examined before me, Henry C. Connelly, a notary public for the county of Rock Island and State of Illinois, duly authorized by law to administer oaths, at the city of Rock Island, in the county and State aforesaid, on this fifth day of October, A. D. 1870, by virtue of the annexed commission and upon the interrogatories thereto attached, to be read in evidence in a certain suit now pending in the circuit court of the United States for the district of West Tennessee, wherein Semple Ellett, adm'r, &c., is plaintiff, and James Wilkins, surviving partner, &c., is defendant, on behalf of said plaintiff.

The said EDMONIA J. MCNEAL, being first duly sworn, doth depose and say, in answer to the several interrogatories, as follows, to wit:

126 Int. 1st. What is your residence, age, and occupation, and do you know the parties to this suit, or either of them?

Ans. My residence is Rock Island, Illinois; I am about twenty-nine years of age; I have no occupation, other than attending to my household duties; I know Semple Ellett.

Int. 2nd. Do you know Thomas N. Quarles; are you any relation of Semple Ellett or of Quarles?

Ans. I knew Thomas N. Quarles. I am a relation of Semple Ellett and of Quarles; Semple Ellett is my father's brother, and Quarles my first cousin.

Int. 3rd. When and where did said Quarles die, or is he yet alive?

Ans. I learned from a letter from Wm. Goodloe, County, Ala., to my uncle, Robert Ellett, in Hanover Co., Va., that he died at Mr. Goodloe's residence on the 24th of January, 1866, from an accidental shot from Mr. Goodloe's rifle while hunting near Mr. Goodloe's residence. I have no knowledge on the subject of his death other than this, and what I have heard others say. I was residing at Hanover Co., Va., at the time.

127 Int. 4th. Were you or not on intimate terms with him; and if so, where did he live at the time of his death? How long did he live there previous to his death? Do you know where he removed from to his last place of residence and where?

Ans. I was on intimate terms with him. He lived in Memphis, Tennessee, and had lived there since the year 1855 or 1856. He went to Memphis from Alabama in one of those years I think. I have a letter from him written there as early as February, 1856.

Int. 5th Have you any letters of his in your possession? Do you know his handwriting? Will you please file such letter with your deposition, and state whether it is in his handwriting?

Ans. I have a great many letters of his—the fruits of a correspondence of several years with him. I have the last letter he wrote to any of his relations in Virginia, written to me from Memphis, on the 1st day of January, 1866, on the eve of his starting to Alabama, in which he announced the death of his mother, and his intention to go to Alabama to look after his affairs, where he advised me he would remain about four weeks, and informed me that he was still with the same house in

128 which he was engaged when I was on a visit to North Alabama, in 1859–'60. I know his handwriting, having corresponded with him for a great many years, & seen him write. I attach to my deposition four letters written by my cousin, Thomas N. Quarles—three of them to me, and the other to our aunt and Uncle Otter, then residing in Kentucky, where I was visiting. The first letter is written at Memphis, Feb'y 24th, 1856, and is marked Exhibit A; the second one is written at Memphis, Oct. 9, 1859, and is marked Exhibit B; the third is written from Memphis to his uncle & aunt, then in Kentucky, and is dated November, 19th, 1859, and is marked Exhibit C; the last is a paged letter of seven pages written to me from Memphis, and dated January 1st, 1866, and is probably the last letter he ever wrote to any of his relatives, and is marked Exhibit D.

Int. 6th. Have you ever read any letter from him which you have lost or not? and, if so, state whether he made mention in such letters of his home, where he regarded it to be; of his business, whether he was permanently or temporarily engaged; of his future purposes, if he intended to

remain in his present residence, or if there was any home he
129 intended to go to. State as closely as you can the substance of such letters.

Ans. I have no doubt lost or mislaid some of the many letters I have received from him, but I cannot remember any particular letters nor their contents.

Int. 7. Did you ever have any conversation with him on the matters of the last interrogatory; and, if so, state all he said, as far as you can.

Ans. I have heard him speak of Memphis as his home, & don't remember to have heard him speak of any other place as his home. I have also heard him speak of his business success at Memphis and his hope of expectation of becoming interested as a partner in the house of Clark & Co., in which he was employed. He never spoke of any other place as home, and Memphis was always regarded by all his relatives as his home. (I have heard his mother during her lifetime express the purpose to go and reside with him at Memphis, in the event of his marriage.)

Int. 8. Do you know whether he at any time advised any of his relatives to change their residence to his; and, if so, where did he then
130 state his home and residence to be, and where did he advise them to go to be near him?

Ans. I don't remember any particular instances of his advising particular relatives to go to Memphis, but he frequently dissuaded his relatives and friends generally from a continued residence in Virginia, and to follow his example & go westward, where there was more enterprise and better opportunities for business success. I cannot now remember Memphis being particularly mentioned by him as a proper place to go to, though we inferred that when he advised us to leave Virginia he wished us to go near him at Memphis. I have heard him dissuade relations living in Kentucky from going to Alabama.

Int. 9. Did you ever hear him say where he voted and paid his taxes; and, if so, where and what?

Ans. I never heard him say anything on either subject, that I now remember.

Int. 10. Do you know any other matter or thing which may be of advantage to either party in this suit?

Ans. I always understood, after Cousin Tommie went to Mem-
131 phis, that he was permanently there, and had given up his residence in Alabama. At or about the time he went to Memphis his mother kept house near Courtland, Ala., but soon after broke up housekeeping and lived in the family of her brother William, near that place, and never kept house afterward. He frequently visited his mother and other relatives in Alabama, as he did his relatives in Virginia, but I never had any intimation from him that he intended to return to Alabama to reside, or to Virginia. He also visited his mother in Kentucky, while she visited her sister, in the year 1859; always returning to Memphis at the conclusion of his visits.

Said witness makes the following answers to the cross-interrogatories propounded by the defendant in the above entitled suit, to wit:

1st X-ques. Give the dates of the various letters you refer to, and to whom written.

Ans. This is fully answered by my answer to direct interrogatory

132 No. 5, where the particulars are given, and also by the letters themselves, which are attached to this my deposition.

2nd X-ques. How long before his death did you see him?

Ans. I last saw him in Virginia, late in the summer of 1860.

3rd X-ques. In giving the dates of the letters, specify what he said in each of them.

Ans. The letters themselves accompany this deposition, and have the facts intended to be refer'ed to marked with a pencil.

4th X-ques. State what you did in regard to the administration of Goodloe at Courtland, Alabama, on Quarles' estate. Did you not insist upon and procure a settlement of that administration? Did you not receive a distributive share from it?

Ans. I did not do anything in regard to the administration of Goodloe at Courtland, Alabama, on Quarles' estate; don't know what has been done by him, (except that I have understood he had appropriated Cousin Tommie's effects to his own use.) I have never received any distributive share of the estate.

E. J. McNEAL.

133 I, Henry C. Connelly, of the county of Rock Island and State of Illinois, and notary public for said county, do hereby certify that Edmonia J. McNeal, a witness in the above entitled cause, whose name is subscribed to the foregoing deposition, appeared before me in person, and made answer to the interrogatories as herein set forth; that previous to the commencement of the examination of the said Edmonia J. McNeal, as a witness in the said suit between the parties named in the caption of the foregoing deposition, she was duly sworn by me to testify the truth in relation to the matters in controversy between the said plaintiff and the said defendant, so far as she should be interrogated concerning the same; the said deposition being taken in my office, in the city of Rock Island, in said county and State, on the fifth day of October, A. D. 1869; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Edmonia

134 J. McNeal, before me, the oath being administered by myself at the place and on the day and year last aforesaid.

[SEAL.] H. C. CONNELLY,
Notary Public.

Notary public's fees, $10.

(Endorsed:) No. 1145. Deposition of Mrs. Edmonia J. McNeal. Filed Oct. 14th, 1870.

Also depositions of Andrew J. Sykes, Charles C. Swoope, R. W. Gibson, E. H. Foster, and A. G. Owen. Filed Sept. 17th, 1870, as follows:

UNITED STATES OF AMERICA,
District of West Tennessee:

TO JOHN PHELAN:

Trusting in your fidelity and capacity to examine witnesses, you are

hereby authorized and empowered to cause E. H. Foster, Reese W. Gibson, Hansford Speaks, Charles C. Swoope, Andrew J. Sykes, Thomas H. Jones, and Allen G. Owen to come before you on the day of September next, at the law office of Phelan & Harris, Courtland, Ala.,
135 them diligently to examine touching their knowledge of the matters in controversy in a cause now pending in the circuit court of the United States for said district, wherein Semple Ellett, adm'r, is plaintiff, and James S. Wilkins is defendant, said examination reduced to writing and signed by said witnesses, to be read as evidence on behalf of plaintiff on the trial of said cause, and the same, duly certified under your hand and seal, to return with this writ to this office without delay.

Witness Abram S. Mitchell, clerk, and the seal of said court, at office in Memphis, this 14th day of September, A. D. 1870.

[SEAL.] A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

United States circuit court for the western district of Tennessee.

SEMPLE ELLETT, AD'R,
vs.
JA'S S. WILKINS.

Interrogatories to be propounded to the following witnesses in behalf of the plaintiff: E. H. Foster, Reese W. Gibson, Hansford Speak, Charles C. Swoope, Andrew J. Sykes, Thomas H. Jones, and Allen G. Owen.

1st. What is your age, residence, and business?

136 2. Do you know the parties to this suit, or either of them, and which?

3. Were you acquainted with the late Thomas N. Quarles; and, if so, how long have you known him?

4. When did he die; did you see him at or about the time of his death, and from what cause did he die?

5. If you are not personally acquainted with the circumstances of the death of Quarles, state if you heard them from Goodloe, at whose house he was staying, or if you heard the current and general report at the time of his death.

6th. How long had you known the deceased, Quarles, before he died; where did he live surviving the period of your acquaintance?

7th. If you say that the deceased lived in Memphis, state when he came to Memphis to live, where did he remove from when he came to Memphis, what was his age at the time of his removal.

137 8th. Did the deceased have any property in Alabama at the time of his death; and, if so, in what part of Alabama, and what was the nature and value of the property?

9th. Did you ever have any conversation with the deceased as to his residence, home, or domicile; and, if so, state fully this conversation or conversations; and if he stated at any time his future plans for business or residence, set out these conversations fully and particularly.

10th. Do you recollect whether the deceased stated to you at any time where he was in the habit of voting, or whether he did vote; and, if so,

state who he said he had voted , and where and what election he had cast such vote?

11th. Have you any letters or writing from the deceased; or have you had such in which any mention is made by him of his business or home; if so, set out such writing appended to this deposition; or, if such writing has been lost, and you have been unable to find it, set out the
138 substance of such writing if you recollect the substance.

12th. State all that you know in the premises which may be of advantage to either party.

We agree to the foregoing examination, & waive cross-interrogatories, reserving by consent all objections for relevancy or competency.

HUMES & POSTON,
Att's for Def't.

(Endorsed:) Semple Ellett, ad., vs. Jas. S. Wilkins. Interrogatories to be propounded to witnesses for pl.

THE STATE OF ALABAMA,
Lawrence County, ss:

By virtue of the annexed commission to me direct' from A. S. Mitchell, clerk of the United States circuit court for the western district of Tennessee, I have caused Andrew J. Sykes, Charles C. Swoope, Reese W. Gibson, E. H. Foster, who are personally known to me, to come before me at the law office of Phelan & Harris, in Courtland, Alabama, on he 17th day of September, anno Domini 1870, for the purpose of taking their
139 depositions on behalf of the plaintiff, to be read as evidence in a certain suit now pending in the said United States court, wherein Semple Ellett, adm'r, &c., is plaintiff, and James S. Wilkins is defendant; and the said witnesses being duly sworn by me to speak the truth, the whole truth, and nothing but the truth, deposed as follows:

ANDREW J. SYKES, being sworn, says:

Answer to 1st int'r. Forty years old; physician, & reside in Courtland, Ala.

Answer to 2nd int'r. I think I have a slight acquaintance with Semple Ellett. I do not know the other party.

Answer to 3rd int'r. I was well acquainted with Thos. N. Quarles. I knew him from about 1847 to the time of his death.

Answer to 4th int'r. He died about the year 1866; I do not positively recollect, however, but about that time. He died at the house of William Ellett, about three miles or four miles from Courtland, on the Rrows' Ferry road. He died from erysipelas, caused by a gun-shot wound.
140 Answer to 5th int'r. I heard from William Goodloe that he (Goodloe) shot him accidentally. Goodloe told me so himself.

Answer to 6th int'r. I knew him about 18 or 19 years. He lived when I first became acquainted with him at his uncle's, Wm. Elletts, where he died. He afterwards moved to Memphis, and was on a visit to his friends in North Alabama when he died.

Answer to 7th int'r. I do not recollect the year he went to Memphis; he went to Memphis from Lawrence County, near Courtland, Alabama.

When he went to Memphis he was quite a young man; just grown, I should say.

Answer to 8th int'r. I do not know anything about his pecuniary affairs at that time. Don't know that he had any property.

Answer to 9th int'r. I do not recollect any conversations that I ever had with Quarles as to the matters spoken of in the interrogatory.

141 It was my impression that he lived in Memphis, as he was doing business with Clark, a jeweler.

Answer to 10th inter. I recollect nothing of the sort.

Answer to 11th int'r. I never had any correspondence with him.

Answer to 12th int'r. I know nothing more.

ANDR. J. SYKES.

CHARLES C. SWOOPE, being duly sworn, says:

Answer to 1st int'r. Thirty-five; near Courtland, Alabama; planter.

Answer to 2nd int'r. I think have a slight acquaintance with both.

Answer to 3rd int'r. I was. I have known since his childhood; was raised up near him.

Answer to 4th int'r. He died at the residence of Wm. Ellett, dec'd. I saw him at Courtland a short while before his death. He died

142 from an accidental gun-shot wound, as I learned.

Answer to 5th int'r. I heard that he was accidentally shot by Wm. Goodloe from current report.

Answer to 6th int'r. I knew him all his life. He lived most of the time in Lawrence County, Ala., near Courtland, and a few years in Memphis, Tenn.

Answer to 7th int'r. He went to Memphis about the year 1856 or 1857, as near as I can now recollect. He went from Lawrence County, Alabama. I think he was about 21 or 22 years of age when he went to Memphis.

Answer to 8th int'r. None that I knew of.

Answer to 9th int'r. I never spoke to him about his plans or business.

Answer to 10th int'r. He never spoke to me about voting.

Answer to 11th int'r. I never had any correspondence with him.

143 Answer to 12th int'r. I know nothing.

C. C. SWOOPE.

REESE W. GIBSON, being duly sworn, says:

Answer to 1st int'r. Forty-seven; near Courtland, Alabama; planter.

Answer to 2nd int'r. I know Ellett; I do not know Wilkins.

Answer to 3rd int'r. I knew him from 1854 till the time of his death in 1866, I think.

Answer to 4th int'r. He died at the Ellett place, about three miles from Courtland, Alabama; I saw him just before his death, perhaps about a week before; I suppose he dec'd from the effects of a gun-shot.

Answer to 5th inter. I heard Goodloe say that they were setting for wild geese under a blind. That they saw a flock of geese, and Quarles ran out before him (Goodloe), & that he (Goodloe) got his gun-cock amongst the *cain*, and his gun went off accidentally and killed him (Quarles);

144 I sat up one night with Quarles, after he was shot and he told me that he was accidentally shot by Goodloe, as stated above.

Answer to 6th int'r. I had known him since 1854, to the time of his death. He lived part of the time at the Ellett place; part of the time at school in Tennessee somewhere, & at the time of his death, his home was in Memphis, Tenn., and when he got shot he was here on a visit to his friends.

Answer to 7th int'r. I know not when he went to Memphis to live. I think he went from near Courtland, Ala. I do not know his age.

Answer to 8th int'r. Not that I know of.

Answer to 9th int'r. I never did.

Answer to 10th int'r. Not that I now recollect.

Answer to 11th int'r. I have none.

Answer to 12th int'r. I know nothing else.

R. W. GIBSON.

145 E. H. FOSTER, being duly sworn, says:

Answer to 1st int'r. Forty-seven; Courtland, Alabama; practising lawyer.

Answer to 2nd int'r. I know the plaintiff; I do not know the defendant.

Answer to 3rd int'r. I knew Thomas Quarles; I have known him from his childhood.

Answer to 4th int'r. He died near Courtland, Alabama. I did not see him at or about the time of his death. I know nothing of the cause of his death, except from hearsay.

Answer to 5th int'r. The general report in the neighborhood was, at the time of his death, that he died from an accidental discharge of a gun in the hands of Wm. Goodloe whilst they were hunting together. I do not recollect any conversation with Goodloe as to the circumstances of his death. He was visiting Goodloe when the accident occurred.

146 Answer to 6th int'r. I had known the deceased since about the year 1852 or 1853. He lived near Courtland, Alabama, until his removal to Memphis, Tenn., which, I think, occurred in 1859 or 1860.

Answer to 7th int'r. Answered in the preceding question. I do not know his age exactly, but I suppose he was 21 or 22 years old.

Answer to 8th int'r. I know nothing certain as to the property he owned or its value.

Answer to 9th int'r. I visited Memphis frequently after his removal to that city, and usually saw him when there. He was an employee in the house of Clark & Co., a large jewelry establishment, and spoke of his employment in that house as though he considered it of indefinite duration. He took much interest in the business of that establishment, and was much engaged in collecting their bills about the city, & seemed to have the confidence of the house to a large extent.

147 Answer to 10th int'r. I know nothing connected with his voting.

Answer to 11th int'r. If I had any correspondence with him, I do not now recollect it. I have no letters of his to me while he lived in Memphis.

Answer to 12th int'r. I know of nothing further of advantage to either party.

EPHRAM H. FOSTER.

ALLEN G. OWEN, being duly sworn, says:

Answer to 1st int'r. Sixty years old; Courtland, Alabama; farmer.

Answer to 2nd int'r. I am slightly acquainted with Semple Ellett.

Answer to 3rd int'r. I was acquainted with him from his boyhood up to the time of his death.

Answer to 4th int'r. He died about three miles from Courtland, Alabama, at the residence of Wm. Goodloe. I did not see him. He died from a gun-shot wound, so I understood from common talk.

148 Answer to 5th int'r. I never heard Goodloe say anything about it that I now recollect. I heard that he was shot through general report.

Answer to 6th int'r. I knew him from the time he was a good-size boy until his death. A portion of the time he lived in Courtland, Alabama, and a portion of the time in Memphis, Tenn.

Answer to 7th int'r. As near as I can recollect he went to live in Memphis about 1858 or 1859. He was living at Mountain home awhile with his mother, and near Courtland awhile with his uncle. When he went to Memphis, I suppose he was 18 to 21 years of age.

Answer to 8th int'r. Not to my knowledge. He had his watch, I understood; I have seen him wear a watch.

Answer to 9th int'r. I never did. I know he lived in Memphis. I have met him in Memphis, and he was a clerk in the jewelry store of Clark & . I have bought goods from him.

149 Answer to 10th int'r. I never did.

Answer to 11 int'r. He never wrote to me about such matters.

Answer to 12th int'r. I know nothing else.

A. G. OWEN.

I, John Phelan, certify that the above depositions of Andrew J. Sykes, Charles C. Swoops, Reese W. Gibson, E. H. Foster, were taken at the time and place mentioned in the caption, after the deponents had been sworn; that the deposition of each witness was read to him and heard throughout and by him fully approved and signed; and the said depositions were not out of my possession until the same was sealed up and directed to the said A. S. Mitchell, and put in the post-office at Courtland, Alabama.

Given under my hand and seal, this the 17th day of September, 1870.

JOHN PHELAN, [SEAL.]
Commissioner.

150 (Endorsed:) 1145. Filed Sept. 17, 1870.

Bill of costs.

Comm—issueing subpœnas & taking depositions.....	$20 00
E. J. Simmons, sheriff, executing & returning 7 subpœnas.....	3 50
	$23 50
Witnesses, $1.50 each: A. J. Sykes, C. C. Swoope, R. W. Gilson, E. H. Foster, A. G. Owen, one days' attend.....	7 50
	$31 50

Plaintiff also introduced Mrs. J. M. WHITE, who testified:

I am a third or fourth cousin to Quarles. I was living in Memphis at

the time he came here. I think he came here in 1854. I would say he was then about 18 years old. When he first came my husband assisted him in getting employment with King, and then with Clark & Co. Mrs. Goodloe was his first cousin. His mother had no home or property in North Alabama. She lived with her brother. She clothed herself in part with her needle. He would occasionally come out to my house in the country, and stayed there sometimes a week. In case of sickness he came out to our house. I never heard him express any dissatisfaction with Memphis. I should say he expected to go into business. I never heard him say anything about going back to North Alabama.

151 He had no home or property in Alabama. William Ellett, in whose family he was raised, died about the war. As children, he and his cousin Julia, wife of Goodloe, were not very harmonious. In later years they were probably more harmonious. He had not previously visited her since his mother's death. His mother lived with her brother Wm. Ellett. She visited around a great deal in North Ala. She made one visit to Virginia. Part of the time I lived in Memphis, on Poplar street. While we lived in the suburbs he frequently visited our house. I nursed him through a spell of sickness. He was sick at our house a week or two, and more than once. He never boarded with me.

Cross-examined:

Mrs. Wm. Ellett died before her husband died. Quarles came very frequently to our house. I was his only relative in Memphis, and he probably came to our house more familiarly and intimately than to any place in Memphis.

Plaintiff also introduced Dr. E. A. WHITE, who testified:

152 I was raised here and near here. I knew Thos. Quarles. I knew him intimately about 1860. His being related to Mrs. White brought us into intimate relations. We roomed together the most part of 1863 and 1864. He lived or boarded in 1863 & 1864 with Neiderer, & we slept in the Walker block. He lived in Memphis all the time I knew him. I only remember of his going away once—the last trip he made. I knew him intimately from '60 to '66. I never heard him speak of returning to Ala. permanently. He spoke of going home on visit, when he went to Ala. I heard him speak of his trades; he was successful in his trades or business. I never heard him say anything about going into business for himself. He was well satisfied with his place at Clark & Co.

On cross-examination witness stated more than once that Quarles always called Ala. his home in speaking of it. Witness has been a practicing physician in Memphis for 25 years, and before and just previous to Quarles leaving Memphis the last time he treated him for disease that had become constitutional.

153 Plaintiff read the following stipulation:

EXHIBIT A, No. 2.

1858.	Dist.	14.	City	& watch	& poll tax,	Thomas Quarls.
1860.	"	"	"	"	"	T. N. Quarrels.
1861.	"	"	"	"	"	T. Quarrels.
1862.	"	"	"	"	"	T. Quarrels.

It is agreed that the foregoing are true copies of entries upon the State & county tax books for the years respectively shown above. That the foregoing entries are taken from the original duplicate tax books kept in the county court, and that the same show no payments of taxes by any one; that the duplicate set issued to the tax-collector alone shows payments; that the set issued to him for the year 1858 cannot be found; that that issued to him for 1860 is in possession of the U. S. Government, at Washington; that that for 1861 is in the hands of the present tax-collector, & has no entry showing payment of this tax, & that no duplicate ever issued for 1862, the legislature of the State having set aside all taxes for that year.

154 It is further stipulated that the city tax books show assessments and payments as follows:

1857.	Quarles, T., 1 poll, paid	$1	12
1858.	Quarles, Thos. " 1 watch	2	10
1859–60.	Quarles, T. "	1	00
1860–61.	Quarles, T. "	1	00

And that the assessment book for the year 1858 has this entry:

"T. Quarles at F. H. Clark's, 1 poll.

The books show no evidence of payment of the same except that for 1857.

HUMES & POSTON,
Att's for Def't.

(Endorsed:) Stipulation.

Defendant read without objection the deposition of Wm. Goodloe and his letters of administration from the probate court of Lawrence County, in the State of Alabama, and also Wm. Goodloe's inventory of the intestate's effects filed with said probate court, and his account filed in said court as follows:

EXHIBIT H.

Deposition of William Goodloe.

Dist. of W. Ten., Circuit Court U. S. of America.

155 SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec's'd.
vs.
J. S. WILKINS.

Be it remembered that on this 11th day of March, 1867, at the office of Humes & Poston, in Memphis, the deposition of William Goodloe was taken by consent of parties, plaintiff and defendant, before me, Fean Penn, a United States commissioner duly commissioned, &c., to be read on behalf of def't in the above-named cause. After having been duly sworn, the witness deposed as follows:

Question 1. (By defendant.) If you received money from def't, Wilkins, as connected with Thomas Quarles' estate, will you please state in what capacity you received it, exhibiting your authority as well as the amount

ascertained to be due said Quarles, & how & in what way was the amount accounted for; what you have done with the money received, and what amount, if any, you have received in this behalf as a matter of administration?

Answer. Thomas N. Quarles died at my house in Lawrence County, Alabama, prior to the 27th day of January, 1866, leaving personalty in that county; on that day I administered on his estate in said county,
156 & letters of administration were issued to me of that date, the original of which is here exhibited as part of this deposition. I gave bond and surety as required by law. After this I went to Memphis, Ten., and exhibited my authority and a certified copy of my administration bond to defendant, and demanded payment of him of what he owed said Quarles. He showed me his books on which a balance appeared in Quarles' favor, entered in his own handwriting as former book-keeper of F. H. Clark & Co., amounting to the sum of $3,455.22, which sum was paid to me as such administrator by def't Wilkins, about Feb., 1866. I took this sum and included it in my inventory returned to the probate court of Lawrence Co., Ala. I have loaned out a part of this money on what I believed to be good security, and a part of it is in my own hands; that is, I am accountable for it, as in part of it. I have resigned my office as administrator. Thomas Masterson has charge of the business. The above-named inventory was duly filed by the court as an office paper.

And further this deponent saveth not.

WILLIAM GODLOE.

157 As counsel for plaintiff I waive notice and consent to the taking of this deposition, but except to it as irrelavant and as having been given by an incompetent witness.

D. K. McRAE.

I certify that the foregoing deposition was taken before me, and signed by the said Wm. Goodloe, in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

In testimony whereof I have hereunto set my hand and official seal this eleventh day of March, A. D. 1867.

[DIST. WEST. TENNESSEE.] FEAN PENN,
U. S. Commissioner.

Commissioner fees, $2.00.

These are the letters of administration referred to in the annexed deposition.

FEAN PENN, *U. S. Comm.*

Letters of administration.

THE STATE OF ALABAMA,
Lawrence County, ss:

I, Charles Gibson, judge of the probate court of said county, certify that letters of administration on the estate of Thomas N. Quarles, dec'd,
158 were on the 27th day of January, 1866, granted to William Goodloe,

who has duly qualified and given bond as such, and is authorized to proceed accordingly. Dated this 27th day of January, 1866.

CHARLES GIBSON,
Judge of Probate Court, &c.

The def't then introduced a certified transcript from the records of the probate court of Lawrence County, Alabama, showing William Goodloe's inventory of the intestate's effects filed with said court, & his final settlement with the court, said inventory exhibiting the amount of thirty-four hundred and fifty-five $\frac{22}{100}$ dollars received from the defendant by said Goodloe as administrator, and showing that the same was accounted for in his settlement with the court. This transcript was received without objection, and the same marked "Exhibit J," was read as evidence as follows:

159 Copy.

EXHIBIT J.

Inventory of property belonging to es't. of Thomas N. Quarles, dec's'd on or about 27th, 1866.

1 bedstead	20	00
1 spring mattress	12	00
1 hair & two pillows	7	00
1 mosquito bar	2	50
1 lot bedclothing	29	50
1 bureau	20	00
1 washstand	15	
1 trunk	6	
1 lot tin	1	50
1 shot-gun & accoutrements	37	00
2 cans powder & box wads	2	50
1 tube wrench		50
1 large c'ronometer watch	80	
1 medium " "	60	
1 triqued Geneva " & chain	30	
1 gold chain	30	
1 diamond pin (cross)	30	
1 lot gold rings	10	
1 sett solid gold sleeve buttons	5	
3 breast pins for	10	
1 tobacco can	1	
2 pr. boots @ 5.00	10	
1 " slippers	1	50
2 lots clothing for	5	00
1 silk h'k'f	2	00
6 cambric h'dk'fs	3	
	431	00
1 leather cup		25
2 cravats		50
31 collars	4	00

	12 cuffs		1 50
	2 bot's indel. ink		10
	1 lot cartridges		50
	3 1/2 doz. pearl buttons		1
	1 tablet		25
	1 shoulder brace		1 50
	1 money belt		1
	5 br'd towells		2 50
	3 cravats		3 00
	5 col'd shirts		7 50
160	24 pr. lisle thread socks, 25c		6 00
	10 lin. brown shirts		18 00
	1 nett jacket		2
	1 suit cassimere, dark,		25
	1 cloth coat		15
	1 cas. pants		5
	1 cass. coat		2 50
	1 second-hand vest		1
	1 cot. velvet vest		5 00
	1 sec.-hand velvet vest		1 50
	1 white silk vest		1
	1 grey vest		25
	1 pr. light cor. pants		1
	1 " " " " ch'k		2
	5 Mersailles vests		4
	1 satin vest, white		1 50
	2 under shirts (cot.)		1 50
	4 pr. pants		8 00
	5 pr. drawers		2 00
	1 valise		1
	1 Trenter pistol		15
	1 rubber coat		5 00
		577	85
	To cash on hand	100	
	" am't cash from F. H. Clark & Co., as per certified ac	3,455	
		4,132	85

William Goodloe, adm'r of estate of Thos. N. Quarles, d'd, in acc't with the probate court of Lawrence County, Ala., on final settlement of his administration.

1866.			
Jan'y 31st.	To cash from F. H. Clark & Co	1,000	00
Feb'y 21.	" " " "	2,455	22
	Cash on hand as p'r return	220	00
	To am't first inventory rec'd	587	85
		4,263	07

1866.		By error in 2d inventory, cash on hand	100	00
Jan'y	25.	By am't p'd hands digging grave	3	00
	27.	By am't stamps on letters administration & bond	2	05
		" " certificate, seal, & transcript	1	25
Jan'y	31.	" " p'd exp. p'ck'ge from Memphis	1	50
	30.	" " G. H Becker's bill	35	
161	Jan'y	31. By am't Lewis Cutin's ac	193	35
	Feb'y	3. Dr. McMahon's bill	47	50
		5. Freight on R. R	22	50
		6. For hawling	5	00
Jan'y	31.	Cash p'd expenses to Memphis & return	33	75
Feb'y	23.	" " " " " "	33	75
Mar.	24.	" " Dr. H. W. Bentley's acc't	26	
Ap'l	16.	" " sh'ff commission on appointment	2	50
	26.	" " Dr. J. B. Coon's bill	8	12
May	31.	" " expenses to Memphis & return	25	75
June	8.	" " H. C. Jenk's acc't	22	
	16.	" " W. H. Goodloe's acc't (allowed)	118	76
			681	78
		Am't bro't forward	681	78
June		By am't att'y fees	150	
			831	78
Feb'y	25.	By am't loaned Mattison & Mickell	500	
	27.	" " " C. S. Mattison	200	
Mar.	9.	" " " J. L. Goodloe	325	
		Doubtful claim on S. E. Garth	250	
		" " " A. B. Burr	750	
			2,025	00

162 STATE OF ALABAMA,
Lawrence County:

I, I. H. McDonald, judge of probate in and for said county, hereby certify that the foregoing, purporting to be the inventory of the personal property of the estate of Thomas N. Quarles, deceased, as returned to the probate court of said county by William Goodloe, administrator of said estate of Thomas N. Quarles, and of the account filed by said administrator for final settlement of his administration, are true and correct, and that the said personal property has been turned over to and reinventoried and sold by the administrator de bonis non of said estate, and that said settlement of said William Goodloe is still pending in this court and litigated, and that the items, both debits and credits, are precisely in accordance with said account, except as to the item of interest charged and claimed by said Goodloe in said account against himself in the debits thereof, as the same said inventory appears of record and account filed in my office.

Given under my hand, with the seal of office affixed, this 15th day of March, 1867.

[SEAL.] I. H. McDONALD,
Judge Pro. Court.

163 Defendant introduced himself, JAMES S. WILKINS, surviving partner of F. H. Clark & Co., who testified that Thomas N. Quarles entered the employment of F. H. Clark as a clerk, as early as 1856, or earlier; that he was employed by the year or month, his salary being payable monthly; that he continuously worked for us as clerk from 1856 until he left here about the first of January, 1866; that he had left the accumulation of his salary to the amount shown in the account exhibited in this case, and they allowed him interest on his balance at end of each year. This was done to encourage their employees to habits of economy and saving. That a warm and intimate friendship sprang up between Quarles and himself, and continued to exist up to the time of Quarles' leaving, just before his death; that Quarles always spoke of and referred to Alabama as his home, and said that Tennessee was not his home, but Alabama was; that he had known him on several different occasions to refuse to register as a voter & vote for State, county, and municipal officers in Memphis, on the express ground that he was not a Tennessean, but an Alabamian, and therefore not entitled to vote in Tennessee. Witness said he remem-
164 bered on one occasion, when there was considerable excitement about the result of an election, he himself asked Quarles as a favor to go and vote and he refused to do so, saying he could not, because he was not a Tennessean, but an Alabamian, and that was his home. These refusals all occurred after 1864. When Quarles left he was in bad health, and they made no express arrangement for his return to their service, and said nothing about it, tho' he expected him to return. Quarles said he was going to North Alabama to settle up his deceased mother's affairs, and would go from there to Virginia to look after some matters there, and therefore the duration of his absence was uncertain. Witness had no doubt that he was coming back.

On cross-examination, witness said he could not specially recall but one occasion when he heard him speak of Alabama as his home, outside of his refusal to vote, and that was about a year before his mother's death, on the occasion of her visit to him. She was urging him to go home to Alabama with her. He declined to do so, saying his business was such that he could not, but in this conversation he referred to Alabama,
165 and called it his home. The occasion' he refused to vote were during or about the close of the war, and he did put his refusal alone upon the avowed ground that he was not a Tennessean, but was an Alabamian, and that was his home. When Wm. Goodloe, as Alabama adm'r, applied to witness for Quarles' money, he showed him the account and the balance, as appears on the account in proof. Goodloe exhibited his letters of administration from the court of Lawrence County, Alabama, and demanded the money. Witness immediately went to his general counsel, William K. Poston, sr., now deceased, and asked his advice as to whether he should pay it. Mr. Poston asked witness where Quarles was domiciled at the time of his death. Witness replied, "in Alabama." Poston then advised him to pay the money to Goodloe, and he did so. Witness further

testified, on cross-examination, that Goodloe told him of the circumstances of his (Quarles) getting the accidental gun-shot at the hands of Goodloe, and subsequent death from erysipelas, and that Goodloe further said that just before his death Quarles requested him to take out letters of administration and go to Memphis and get his money from F. H. Clark & Co. The only debts due from Quarles in Tennessee were those to Affliek and White, so far as wiiness knew; that he had paid them before
166 turning over the money to Goodloe, with the consent and approval of Goodloe. Quarles made no investments in Tennessee, but kept his money in hand in the control of his employers on interest, and he was an economical man in his habits. He never kept house, or bought or rented a home in Memphis, but had a room in one of the business blocks of the ciiy, which he furnished. He boarded a' restaurants and boarding houses. He was a man of strong attachments, and very devoted to his mother. He took no part in the rebellion nor war, but remained quietly a' Memphis, attending quietly to the duties of his clerkship and saving his money. He never brought his mother to Memphis to live, nor proposed to do so, but visited her occasionally in Alabama.

Witness further said. on cross-examination, that Quarles was looking about for some business to go into, but did not find any, and witness being asked upon what contingency he, Quarles, expected to return to Alabama, said it would be when he made enough money to retire and take care of himself and mother.

On redirect examination, witness said:

Quarles' mother in my house asked him to come home, & what his replies were I did not closely observe. In urging him to come home
167 he said "I will, just as soon as I can." As to voting, there was an election we were interested in, & I asked him to vote, and he said "I have not regtstered & cannot vote here. My home is in Albama.

Quarles was first employed at $600.00 a year, payable monthly. In 1866 it must have been so much a year; payable monthly. There was no understanding that he was to come back; he could stay or come. He said nothing in regard to returning, but we supposed he would return.

He was in my employment when he left. There was no contract at any time, except when am't of salary was changed. Affliek & White reside in Memphis.

Defendant next introduced EDMUND NEIDERER, who testified that he was personally and intimately acquainted with Thomas N. Quarles, dec'd, during the latter part of his lifetime in Memphis. Quarles was an unmarried man. Witness has resided in Memphis in business for 15 years, and am a married man, but was not when I knew Quarles.

. I became acquainted with him in June, 1864, by his patronizing my house, and we boarded at the same restaurant, at Fred. Thiebot's; we formed a mess of 4 persons, he and I being two of them, and thus became
168 very intimately acquainted. He always claimed Alabama, where his mother lived, as his home. In 1865, a man came up to him and me in my business house, and *me in my business house, and* requested us both and urged us to go and register as voters and take his ticket to vote in the coming election. Quarles said, "I will not vote," and "I won't register as a voter, for I am not entitled to do so, because my home is in Alabama, and I am an Alabamian, not a Tennesseean." Again, at

another time, I heard Mr. Wilkins requested him to vote, and he said he would not vote because he was an Alabamian and not a Tennesseean. I refused to vote and register at the same time because I was a Swiss by nativity and had never become naturalized. He always spoke of his mother in Ala., & that as his home, but, on cross-examination, witness said he could not recall any instance of his so doing except when requested to register & vote, a' abov' stated. When leaving fo' Alabama in January, 1866, he said he was going home to wind up his mother's affairs; that he had been barred out from there by the war. He said he was in bad health, & had erisypelas. He also spoke of inheriting a farm in Alabama. Witness was sure it was in Alabama.

169 Defendant next introduced A. BROOK, who testified he was near 70 years old; had been a merchant in Memphis for more than 30 years; he is now and for several years has been retired—living on a farm some 7 or 8 miles from Memphis. His business house, wholesale and retail hat merchant, was the next door to that of F. H. Clark & Co., on the southeast corner of Main & Madison streets, in Memphis, from 1856 to Quarles' death and afterwards. Witness became very well acquainted with Quarles, and the latter often discussed his future plans and schemes with witness; often came into witness's business house in the evenings and talked familiarly with him; told him he, Quarles, had a widowed mother near Courtland, in North Alabama, and that was his home; and that he never would have left it had he been able to work on a farm; that he had come to Memphis to make enough money to go back and take care of his mother in her declining years; that so soon as he could do so he would return to North Alabama. On one occasion, in witness'
170 business house, Quarles and he were sitting talking together, when some one came in and requested Quarles to go and register as a voter. Quarles refused, and avowed as the reason why he would not, that his home was not in Tennessee; that he was an Alabamian, and therefore could not register as a voter in Tennessee. The gentleman or person was somewhat persistent, and Quarles became somewhat irritated, and repeated his reason, after the man had gone out, to witness. Witness in all his long acquaintance with him never heard him acknowledge Tennessee as his home, but invariably, when speaking of it, claimed Alabama as *as* his home, and said he was going back there so soon as he could make enough to retire on and support him and his mother. He was a man of very strong attachments, and tender in his feelings as a woman.

Defendant also proved that A. Afflick was a clerk in the employ of F. H. Clark & Co., during the same period of time that Quarles was; that Afflick testified for defendant before the jury on the first trial of this
171 case, and died after that trial; that his testimony was in the following words and figures, to wit:

"The decedent, Quarles, was reared in Lawrence County, Alabama, where his mother, a widow, resided up to her death a short time before his death; that Quarles came to Memphis, Tennessee, some ten years before his death, a youth under 21 years of age, and entered the employment of F. H. Clark & Co. as a clerk upon a salary, and so continued up to a short time before his death. He kept a room and necessary furniture, and boarded at various boarding houses and restaurants in the city, and when he went to Lawrence County, Ala., to settle up his mother's estate, with

the declared intention of returning to Memphis to resume his duties as clerk in the house of Clark & Co.; but he also testified that he was intimate with Quarles during his continuance in Memphis, and heard him frequently declare that he did not consider Memphis his home, but he still regarded Lawrence County, Alabama, as his home, and he intended ultimately to return there to reside permanently; that he had known him to refuse to vote at elections held in Memphis, Tenn., for municipial, county and State officers upon the express ground that he was not a citizen of Tennessee, but a citizen of Alabama. He also testified that a short time before his death he declined to register as a voter under a recent act of the legislature of Tennessee regulating the right of voting, and he did so upon the express declaration at the time that he was not a citizen of Tennessee, but of the State of Alabama; that Quarles was an unmarried man, without family, and died in Lawrence County, Alabama."

172

This was all the evidence in the case.

The court was requested by defendant's counsel, at the trial, and before the jury were charged, to give the following instructions on behalf of the defendant to the jury, and the court refused each instruction as asked and when asked, and to each of these several refusals defendant excepted severally as each was refused, and as shown at the foot of each instruction at the time of each refusal, and each and every exception was allowed by the court.

EXHIBIT Z.

Instructions asked by defendant to be given to the jury, and refused by the court, and refusal excepted to.

173

ELLETT, ADM'R OF THOMAS N. QUARLES, DEC'D, vs. J. S. WILKINS. No. 1145.

1st. That a domicile, once existing, continues until another is acquired; and where a change of domicile is alleged, the burden of proving such change rests upon the party making this allegation. It being an undisputed fact that Quarles, the decedent, was domiciled in Alabama at the time he moved to Memphis, plaintiff must prove, not only that he came to Memphis to engage in business, and did engage in business, but also that he came to Memphis, and either at the time of his coming or during his residence, formed the intention to change his domicile from Alabama to Memphis. Two facts must be proved in order to fix his domicile in Tennessee. First, residence in Tennessee, and secondly, intention to reside there permanently.

This instruction was refused, and defendant excepted at the time, and the exception was allowed.

Second. If the jury believe from a view of all the testimony, that Quarles came to Memphis, Tennessee, to seek employment and obtain the position of a clerk by the month, or by the year, in the mercantile house of F. H. Clark & Co. on a salary, and that he came, and thus obtained and held the employment aforesaid with an

174

intention, fixed and unaltered during his whole stay here, not to make Memphis or Tennessee his home, nor to give up Alabama as his home, then they will find that he did not change his domicile from Alabama to Tennessee, and they will find for the defendant.

This instruction was refused at the trial; def. then excepted and the exception was allowed.

Third. To ascertain his intention, the jury may look to and consider the following facts, if proved: that Quarles had, from his infancy, until he was 18 years old, lived with his widowed mother in Lawrence County, Alabama; that she had remained there as her home up to a short time before his death; that he had repeatedly during his residence in Memphis declared "he had come to Memphis because he was too feeble to labor on a farm, and so soon as he made money enough he would return to take care of his mother; that Tennessee was not his home, but Alabama was;" that his employment was a clerkship from year to year or month to month, which he could terminate at any time;
175 that he had made no investments in Tennessee, but kept his funds in hand with employers; that although his mother was a widow dependent on him and her own labor for a support, yet he did not bring her to Memphis.

They may also look to and consider his verbal and written declarations, if any such are proved, that Alabama was his home, and that he persistently declared, if so proved, Alabama to be his home, and refused to acknowledge Tennessee as his home.

This instruction was also refused, and def. excepted in law, and the same was allowed at the trial.

Fourth. They may also look to and consider whether, when applied to to vote in Tennessee, he invariably refused to vote in municipal, county, and State elections, and the reason given by him, if such reason was given, that he was not a citizen of Tennessee, but was a citizen of Alabama.

This was refused at the trial, and def't then excepted, which was allowed.

Fourth. That they may look to and consider the fact that he refused to register as a voter in Tennessee for the avowed reason that he was not a citizen of Tennessee, but was a citizen of Alabama.

176 .Such refusals to vote and to register as a voter in Tennessee because he was a citizen of Alabama, if proved, are not casual conversations, but are solemn, verbal acts of refusal to regard Tennessee as his home, and are entitled to serious consideration by the jury, as proof of a fixed purpose by Quarles not to give up Alabama as his domicile or home.

This instruction was refused, and def't excepted at the trial, and the same was allowed.

Fifth. The jury may also look to the fact that defendant, Wilkins, when about to pay the money over to Goodloe, the Alabama administrator, first asked the advice of counsel, and stated that Quarles was domiciled in Alabama; they may look to this as some evidence of what Quarles' intention as to domicile was.

This instruction was refused, and def't excepted at the trial, and the same was allowed.

Sixth. Employment as a clerk from month to month, or from year to

year, in a mercantile house, such as that of Quarles in the house of F. H. Clark & Co., is a temporary employment and not a permanent one.

This instruction was refused and defendant excepted at the trial, and the same was allowed.

177 Seventh. The money having been paid to the Alabama adm'r before the appointment of one in Tennessee, and there being no Tennessee creditors, the payment was valid discharge, without reference to the domicile.

This instruction was refused, and def't excepted at the trial, and the exception was then allowed.

Eighth. Especially is the seventh instruction the law, as the Alabama probate court of Lawrence County took cognizance and jurisdiction of the assets, after they were transferred there inventoried in that court, and that court actually distributed a portion of them to the distributees, including the present plaintiff, under the laws of Ala.

This instruction was refused by the court at the trial when asked, and the defendant then excepted to such refusal, and the same was then allowed.

Ninth. The present plaintiff is estopped to deny Alabama to be the domicile of the decedent, Quarles; because he, the plaintiff, with a full knowledge of the fact of their transfer by Goodloe, the Alabama adm'r, from Tennessee to Alabama, under his Alabama letters of adminis-

178 tration, participated in a distribution of a part of the Tennessee assets, and had the Tennessee assets turned over by Goodloe to the Alabama adm'r de bonis non, on Goodloe's resignation.

This instruction was refused by the court at the trial, and the def't then excepted, and his exception was allowed by the court.

Tenth. The acquisition of a new domicile does not depend simply on the residence of the party, nor on the length of time of such residence, though great length of time of such residence is strong proof of an intention to acquire the new domicile, but such residence must be accompanied by actual intention of permanently residing in the new domicile.

This instruction was refused by the court at the trial, and the refusal was then excepted to by def't, and the exception allowed by the court.

Eleventh. No length of time of residence for a temporary purpose, nor for a permanent purpose, will constitute a new domicile, if from

179 the beginning and throughout the latter residence the person retained a fixed intention of holding on to and not abandoning his old domicile, and not to create a new one.

This instruction was refused at the trial, & defendant then excepted, and his exception was allowed by the court.

Twelfth. If the testimony proves that Quarles, at several different times during his habitancy in Memphis, when importuned by acquaintances to vote and to register as a voter in Tennessee, declined and refused so to vote and so to register, for the reason, avowed at these several times, that he was not a citizen of Tennessee, but was a citizen of Alabama, the jury may look to such testimony as expressive of a fixed intention not to give up Alabama as his home and domicile during the entire time of his stay in Memphis, unless the testimony in the case shows a subsequent change of such intention. It is not necessary, in order to prove a continuous fixed intention to preserve his home and domicile in Alabama, to prove

declarations made during all the time of his residence in Tennessee. Of course they will also consider all such declarations and acts as
180 may be proved of the contrary intention, under the charge of the court.

This instruction was refused at the trial, and deft. excepted to such refusal at the time, and the same was allowed by the court.

Thirteenth. If Quarles, when he left Memphis, in January, 1866, did not intend to return, but intended to live in North Alabama, and went there and resided with that intent until his death, this would make his domicile in Alabama; and in order to ascertain his intention the jury may consider the following facts, if proved: that being employed by the year he left about the end of the year; that he made no express contract for the continuance of his employment, or for his return; that he was in very bad health; that he was to be gone for an indefinite time. Of course they will consider any other testimony in the case throwing light on this point.

This instruction was refused by the court at the trial, & deft. then excepted thereto in law, and the same was then allowed by the court.

Fourteenth. If the testimony proves there are no creditors of Thomas N. Quarles, deceased, either in Tennessee or Alabama, and
181 none of the distributees reside in either of said States, and the defendant paid over the money sued for to the Alabama administrator, on a showing of proper letters of administration from the probate court of Lawrence County, in the State of Alabama, this would make Goodloe, the Alabama adm'r, and the sureties on his administration bond, liable to the distributees for the money collected of defendant, as well as for the other assets collected by Goodloe in Tennessee, and, therefore, the payment by deft. to Goodloe, as proved, was a proper payment, and discharged defendant, without reference to the question of domicile.

This instruction was refused by the court at the trial, & def't then excepted thereto in law, and the same was then allowed by the court.

Fifteenth. If this suit, in its final issue, fix the domicile of the decedent, Quarles, in Lawrence County, Alabama, then Wm. Goodloe, as adm'r, and his sureties on his administration bond would be liable to the plaintiff, Semple Ellett, and the other distributees of the estate of Thomas N. Quarles, dec'd, for the money paid Goodloe as such adm'r by defendant Wilkins.

182 This instruction was refused by the court at the trial, and def't then excepted to the refusal, and the exception was allowed by the court.

Sixteenth. That said adm'r, Goodloe, and the sureties on his administration bond are so liable anyhow, by reason of Goodloe's having collected the money, and including it in his inventory and account to the probate court of Lawrence County, Alabama, and their being so liable discharge the defendant.

Seventeenth. This 16 instruction is the law of this case, because of the additional fact, if this fact be proved, to wit, that the plaintiff and other distributees accepted partial distribution of the Tennessee effects carried to Alabama by Goodloe with knowledge of the facts.

This instruction was refused, and defendant excepted at the trial, and the exception was allowed.

Eighteenth. The statute laws of Tennessee, from the year 1856 up to the present time, provide that a pole-tax shall be assessed upon and
183 paid by every free male inhabitant of the State between the ages of 21 years and 50 years.

(Act of Feb., 1856; ch. 74, page 82; code of 1858, section 539.)

Payment of such poll-tax, or being assessed for it, could be required of any inhabitant of Tennessee, whether domiciled in Tennessee or not; therefore the fact of Quarles' being assessed for a poll-tax or paying it does not tend to show that he was domiciled in Tennessee.

This instruction was refused by the court, and defendant excepted at the trial, and the court allowed the exception.

To the charge of the court, as and when delivered to the jury, the defendant made the following exceptions, which were made and allowed as shown in Exhibit W, hereto attached.

EXHIBIT W.

Charge of the court, and exceptions thereto of defendant.

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec'd, *vs.* J. S. WILKINS. } No. 1145.

"An eminent English judge, Dr. Lushington, has said that although so many powerful minds have been applied to the question, there is
184 no universally agreed definition of the term, no agreed enumeration of the ingredients which constitute domicile."

This instruction was excepted to during the trial and at the time it was given, because its only effect on the minds of the jury was to confuse and mislead, and because it is not correct. The Supreme Court of the United States have given the following definition of the term, and enumeration of its ingredients: "A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." The ingredients are: "Residence in the new locality," and intention to change the prior domicile for the new one.

The second paragraph of the charge was also excepted to at the time of its being given, and the exception allowed. The paragraph is as follows: "Our own adjudged cases sufficiently establish the rule that one who is residing in a place with the purpose of remaining there for an indefinite period of time, and without retaining and keeping up any animus
185 revertendi, or intention to return, to the former home, which he has abandoned, will have his domicile in the place of his actual residence. Where the question is one of national domicile this statement may not be correct, for such a condition of facts might not manifest an intention of expatriation; but it is accurate enough for cases like the pr'sent, which relate to a change of domicile from one place to another within the same commonwealth."

This instruction was excepted to on the trial, because it makes the change of domicile complete on a change of residence to the new place,

and a purpose of remaining there for an indefinite time, however temporary the purpose may be, and however fixed, clear, and manifest may be the purpose of not remaining there as a home, and because it seeks to draw a distinction between a national domicile and one within the same sovereignty.

Defendant also excepted to the following clause in the charge; said exception was made at the trial, and at the time said instruction was given, and was allowed by the court. Said clause is as follows:

186 "I wish to observe that what is said by our State supreme court, and in all the books, as to distinctions between national or political and civil domicile are not changes in or exceptions to the rules of law which govern the question, but merely distinctions as to the quantum or amount of proof necessary to establish the intention in the one case or the other. The rules of law are the same, but in their application the characteristics are allowed to enter as an element of evidence more or less useful in showing the real intention. It requires a greater amount of proof to show that a man intends to expatriate himself and become a foreigner, than that he intends to remove from one State to another in this Union of States, and still less, that he intends to remove from one place to another in the same State."

The defendant excepted to this instruction, because it drew a distinction wholly inapplicable to the testimony in the case, and tended to confuse and mislead the jury, and because the distinction is not law. A domicile depends on actual residence and intention to make the place of residence the permanent home, and has no necessary relation to expatriation.

187 The same facts which would change the domicile from Alabama to Tennessee would change it from Alabama to England, and the quantum of testimony necessary to the change in each instance would be the same.

Defendant at the trial, and when the same was given, excepted to the next instruction given, and the exception was allowed by the court, which instruction is in the following words and figures, viz: "The term 'domicile' is of more extensive signification than residence, for to constitute domicile two things must concur: first, residence; and secondly, the intention of making it the home of the party. But this distinction between residence and 'domicile' has generally been applied rather to political questions, or those involving considerations of a man's national character as a citizen of one country or another. In this sense, Vattel defines it thus: 'The domicile is the habitation fixed in any place with an intention of always staying there.' Vat., 163. Says the supreme court of Tennessee, in a case construing our attachment laws: 'In this sense,

188 he who stops, even for a long time, in a place for the management of his affairs, has only a simple habitance there, but has no domicile.' This is national domicile in the sense of the public law, by which the national character of the person and the right of succession to movable property are determined. But when used in connection with subjects of domestic policy, as taxation, settlement, voting, and the attachment law, the term 'domicile' has a more confined and restricted import, and implies the same as residence; that is, the home or habitation fixed in any place without a present intention of removing therefrom."

Defendant excepted to this instruction at the time it was given on the

trial, and the exception was allowed; the def't excepted because this instruction makes the term domicile, as applicable to this case, one of the same signification as residence, and as not requiring besides residence an actual intention to make it the home of the party; and because it declares domicile as applicable to this case, not to be within the definition of Vattel, "The domicile is the habitation fixed in any place with an intention of always staying there," & this instruction erroneously de-
189 clares that "domicile, as applicable to this case, means the same as residence, or mere habitation in any place without a present intention of removing therefrom;" but the instruction should declare distinctly that domicile, as applicable to this case, means actual residence in a place, accompanied with the intention of making it his permanent home, or with the intention of abandoning his former domicile, and of remaining in the new one as a permanent home. Although followed by three instructions tending to correct it, yet it was certain to mislead the jury.

To the instruction, "but when he understood to pay to an administrator in Alabama, it was wrongful to do so unless Quarles' domicile was in Alabama," defendant excepted on the trial when it was given, because, as the testimony showed that no Tennessee creditors remained and no Tennessee distributees, the money could lawfully be paid to the Alabama adm'r, especially as the Alabama probate court received in part the Tennessee assets, and distributed them to plaintiff and the other dis-
190 tributee without objection by them, and the administrator, Goodloe, filed as part of his inventory, and in his account for final settlement, the receipt of and statement of the money now sued for.

To the following instruction def't also excepted at the trial when given, and the same was allowed. Said instruction is as follows, viz: "The burden of proving that he changed his domicile to Tennessee is on the plaintiff. He has discharged the burden when he proves that as a fact he removed to Tennessee and continued to reside there for many years. Such removal in fact and residence in fact implies, in the eye of the law, an intention to change the domicile from Alabama to Tennessee. The plaintiff need not prove declarations of that intention; it is sufficiently proved by the mere act of removal and actual residence in Tennessee. By these facts alone the intention is manifested, and we have in the facts themselves a concurrence of the fact of residence and the intention to remain as a prima facie presumption of domicile. This is what the law-books read to us mean when they say 'that where a man lives is taken to be his domicile until
191 facts adduced establish the contrary.' 'A man is prima facie domiciled at the place where he is resident at the time of his death.' This is a most important rule for your consideration, and furnishes you in this case a starting point. There can be no doubt, if you resolve the somewhat contested fact of Quarles' intention to return to Memphis after his trip to Alabama, during which he was killed, in favour of Tennessee."

Defendant excepted to this instruction, because, first, it vests the change of domicile on "the mere act of removal and actual residence in Tennessee," saying that by those facts alone the intention is manifested, and we have in the facts themselves a concurrence of the fact of residence, and the intention to remain." Defendant contended that it should have been submitted to the jury whether, coupled with the actual removal to and residence in Tennesse', the testimony did not show that the removal to and

residence in Ten. were or were not for a temporary purpose, as evidenced by the temporary character of his employment, as a clerk from month to month and year to year; and also a residence in Ten., however
192 long, coupled with a fixed, unaltered determination to retain his domicile in Alabama. If the testimony showed a removal to and residence in Tennessee for a temporary purpose, or such removal and residence coupled with a fixed and unaltered determination to retain his domicile in Alabama, then no such legal presumption as that given by the court would arise; such presumption arising, an actual removal and mere residence could only arise in the absence of testimony showing a different intention.

Secondly, because the court made the mere facts of removal and actual residence control the question of domicile, disconnecting them from and excluding the effect of the testimony as to the temporary character of the employment, and the fixed determina' to retain his home in Alabama, and excluding all the other testimony on this point.

Thirdly, the latter part of this instruction decided the whole question of domicile as a fact against defendant, except the intention of Quarles to return to Memphis after his trip to Alabama, during which he was killed. It told the jury "there was no doubt in favour of Tennessee if they
193 found Quarles intended to return to Memphis after his trip to Alabama," thus excluding all the testimony as to the intention of Quarles to retain Alabama as his home.

The last clause of this instruction is in the words following: "You will look to the testimony and say, whether by the act of going to Alabama he changed his prima facie domicil to that State; if you find he only went there on a visit or temporarily, with an intention of coming back to Memphis, the fact of his going there, and his accidental death there, does not affect the question before you; in that case, Tennessee remained his prima facie domicile."

Defendant excepted to this instruction on the trial, and at the time it was given. The last clause clearly implies Tennessee to be his domicile at the time he went to Alabama on his last trip, and at his death.

The next sentence declares: "Now, then, if you find this fact for the plaintiff, we start with Tennessee, proved by actual residence, to be the domicile of his choice, and a presumption of its continuance as such."
194 Defendant excepted to this instruction at the trial, and when given, because it declares expressly that actual residence proves the place of residence to be the domicile of choice.

The following instruction also, "That where a person lives is taken prima facie to be his domicile until other facts establish the contrary," was excepted to by defendant when given, because it did not qualify the instruction by adding the qualifications to the rule, to wit, where the accompanying proof does not show he is there for a special or temporary purpose, or keeping up a constant, unaltered resolution not to change his former domicile.

To the following instruction: "The defendant, therefore, has cast upon him, by this rule, the burden of disproving that the domicile was in Tennessee to your satisfaction;" defendant also excepted when given on the trial, and exception allowed; because it requires the defendant to establish the intention, not to change the domicile, and this not by a preponderance

195 of the proof, but to the satisfaction of the jury. The true rule requires abandonment or change of domicile, and the intention so to change to be proved by very satisfactory evidence.

The same instruction is repeated in the next clause of the charge, as follows: "If such a continuous and always fixed intention has been proven to your satisfaction by the testimony offered by defendant, or otherwise in the cause, there is no doubt of the law. It would defeat the presumption arising from actual residence, unless on the other hand, you are convinced by the plaintiff that his intention to remain in Tennessee has been demonstrated."

To this defendant excepted, when given on the trial, because again the defendant is required to overthrow the prima facie case of mere residence by proof to the satisfaction of the jury, not by a preponderance of testimony.

Def't also excepted at the same time to the sentence of the charge immediately preceding this, as a clear indication by the court of his opinion being in favour of plaintiff, and the last sentence destroys the previous instruction.

196 The same exceptions were taken to the following clause: "The intention to keep Alabama as his permanent home and abiding place notwithstanding all the facts and circumstances in this case, must be proven to you by defendant." This was excepted to as a clear indication by the court to the jury that all the facts and circumstances in the case were opposed to defendant's theory, and he had to prove the contrary, not show it by a preponderance of proof, but prove it, whereas a mere preponderance of the testimony in favour of Alabama as Quarles' domicile at the time of his death entitled defendant to a verdict, and indeed the burden was on plaintiff. The court added to this last sentence the two following: "That is your only inquiry. Has that fact been satisfactorily proven to you? This is the only question you have to determine." To this defendant also excepted on the trial, when given, on the same ground as the two last, that is, that if the preponderance of the testimony was in favour

197 of the Alabama domicile on the whole case, then defendant was entitled to the verdict of the jury; and again, that mere residence did not prove the intent and the intention.

The following instruction deft. also excepted to when given, and the same was allowed by the court. The instruction was as follows, viz: "The Supreme Court of the United States says 'that intention may be inferred from the circumstances or condition in which a person may be as to the domicile from which he has removed in fact.' Hence you may look to the condition of the man in respect to his domicile as it existed when he left, and all along during the twelve or fifteen years during which he was continuously absent from it, with occasional visits to his mother, who remained there; you may look to his mother's condition all the time, and say whether those facts and circumstances indicate an intention to keep that as his abiding place, or whether they were such as would make a residence and domicile elsewhere necessary or desirable."

198 Deft. excepted to this instruction, first, because it directed the attention of the jury to only a few unimportant circumstances, wholly failing to direct attention to others in the testemoney, such as his claim of retaining Alabama as his home, his refusal to register as a voter

in Tennessee, and his refusal to exercise the elective franchise because he was not a Tennessecan, and the temporary character of his employment. Secondly, because it makes it turn, not on the intention, but whether the circumstances were such as would make a residence and domicile elsewhere necessary or desirable.

Defendant also excepted at the trial, and when given, to the following instruction, viz: "Change of domicile does not depend so much upon the intention to remain in the new place for a definite or indefinite period, as upon its being without an intention to return to the former residence as a permanent abiding place."

Defendant excepted to this instruction, because it makes a change of domicile to depend not on the intention to remain in the new resi-
199 dence as a home, but simply on want of proof of an intention to return to the former home as an abiding place; thus a cardinal rule to fix a change of domicile is reversed.

Defendant excepted at the time of trial, and when given, to the following instruction, and the exception was allowed. This instruction is follows, viz: "The logic of the whole subject, when you come to weigh acts and conduct with declarations, is impressed in the trite maxim, 'actions speak louder than words.'"

Defendant excepted to this instruction, because it was telling the jury in substance and effect that the residence in Memphis for 10 to 15 years in the employment of clerk, was not and could not be overcome by the testimony of defendant showing the declarations of Quarles, however uniformly and solemnly made, that he had not given up Alabama as his home, nor his declarations denying his citizenship in Tennessee and refusing to vote or register as a voter.

200 Defendant also excepted at the trial, and when given, to the following instruction, and the exception was allowed by the court. This instruction is as follows, viz: "The right of election by expressed intention cannot prevail over actual residence for an indefinite time, by any floating intention to return at some future period. It must be more definite, and amount to an actual purpose, kept up and never abandoned, and not inconsistent with the conduct and acts, or other intentions manifested by acts and conduct, or inconsistent declarations." Defendant excepted to this instruction, because the first sentence is confused and calculated to mislead; and the latter sentence erroneously declares that an expressed election to retain the former domicile, however definite, and although it amount' to an actual purpose, kept up and never abandoned, yet it cannot prevail if inconsistent with the conduct and acts of the party or other intentions manifested by acts or conduct, or inconsistent declarations; thus taking away from the jury the duty and power to weigh the conflicting testimony of acts, conduct, and declarations, and leaving
201 them the simple function of deciding against defendant if they found acts, conduct, or declarations inconsistent with the uniform expressed election to retain the former domicile.

To the next instruction defendant excepted on the trial and when given, and the court allowed the exception. This instruction is in the words following, viz: "The result is that the place of actual residence is prima facie the domicile unless there be some motive for that residence not inconsistent with a clearly established intention to retain a permanent resi-

dence in another place." To this instruction defendant excepted, because the same is not law and tends to confuse and mislead.

Def't in like manner excepted to the following instruction: "And you are to find the fact whether or not, on the proof before you, this prima facie presumption has been overturned." The defendant excepted to this, because it was improper and because the proper instruction in
202 lieu was that upon all the testimony before the jury, if they believe the preponderance of proof was in favour of Alabama as the domicile of the deceased at the time of his death, they should find for the defendant.

Defendant also excepted to the following instruction, viz: "And say whether or not Thomas N. Quarles always intended to keep Alabama for his permanent abiding place, or whether he intended to remain indefinitely where he lived."

Defendant excepted to this instruction at the time it was given on the trial, and the exception was allowed because it submits the wrong alternative question, and one well calculated to mislead the jury, because a residence in Memphis, with an intention to remain indefinitely, might be entirely consistent with an intention not to give up his domicile in Alabama; and then the domicile would be and remain in Alabama and not be changed to Tennessee.

Defendant excepted also to the whole charge if the trial and when delivered.

203 The court charged the jury as follows:

ELLETT, ADM.,
v.
WILKINS.

Charge of court, Feb'y 27, 1879.

An eminent English judge, Dr. Lushington, has said that 99 Mass., 592.
"although so many powerful minds have been applied to the question, there is no universally agreed definition of the term, no agreed enumeration of the ingredients which constitute domicile."

"Our own adjudged cases sufficiently establish the rule that Id.
one who is residing in a place with the purpose of remaining there for an indefinite period of time, and without retaining 1 Met., 242.
and keeping up an animus revertendi, or intention to return to the former home which he has abandoned, will have his domicile in the place of his actual residence. Where the question is one of national domicile this statement may not be correct; for such a condition of facts might not manifest an intention of expatriation. But it is accurate enough for cases like the present, which relate to a change of domicile
204 from one place to another within the same commonwealth," or, I may add, the same nation.

Mr. Kent defines the term thus: "The place where a man 1 Sneed, 66.
carries on his established business or professional occupation,

and has a home and permanent residence, is his domicile." (2 Kent, 431, note.) And Mr. Story: "That is properly the domicile of a person, where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. (Conf. Laws, S. 41.)

5 Heisk., 45. "There is but little difficulty," says the supreme court of Tennessee, "in laying domicile rules of law which given in questions of domicile. The difficulty is in applying these rules to the facts of the various cases as they arise." The court then recites the most important of these rules thus: "Home, residence, and business are material elements in the legal idea domicile. A man is presumed to hold his domicile until
205 another is obtained, and to constitute this change the fact and intention must concur." To constitute domicile two things must concur: First, residence; and secondly, the intention of making it the home of the party. There follows a reference to some former cases in this State, from which I extract the following statements of law, which will be useful to you in due consideration of this question. I wish to observe that what is said by our State supreme court and in all the books as to distinctions between national or political and civil domicile are not changes in exceptions to the rules of law which govern the question, but merely distinctions as to the quantum or amount of proof necessary to establish the intention in the one case or the other. The rules of law are the same, but in their application these characteristics are allowed to enter as an element of evidence more or less useful in showing the real intention.

[35 Conn., 357. It requires a greater amount of proof to show that a man intends to expatriate himself and become a foreigner than that he intends to remove from one State to another in
206 this Union of States, and still *was* that he intends to remove from one place to another in same State.

4 Hump., 348; 16 Gray, 340. "The term domicil" is of more extensive signification than residence, for to constitute a domicile two things must concur: first, residence; and, secondly, the intention of making it the home of the party.

2 Sneed, 421, 422; 99 Mass., 592; 1 Met., 242-245. But this distinction between residence and "domicil" has generally been applied rather to political questions, or those involving considerations of a man's national character as a citizen of one country or another. In this sense, Vattel defines it thus: "The domicile is the habitation fixed in any place with an intention of always staying there." (Vat., 163.) Says the supreme court of Tennessee, in a case *courting* our attachment laws: "In this sense he who stops even for a long time in a place for the management of his affairs has only a simple habitation there but has no domicile. * * This is national domicile, in the sense of the public law, by which the national character of the person and the right of succession to
207 movable property are determined. But, when used in connection with subjects of domestic policy, as tax-

ation, settlement, voting, and the attachment law, the term 'domicil' has a more confined and restricted import, and implies the same as residence; that is, the home or habitation fixed in any place, without a present intention of removing therefrom."

Mr. Story says: "That if a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicil, it is to be deemed his place of domicil, notwithstanding he may entertain a floating intention to return at some future period." Confl. Laws, sec. 46. 2 Sneed, 423; 5 Heisk., 46.

The Supreme Court of the United States has summerized these rules, and defines the term thus: "A residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." By the term domicil, in its ordinary acceptation, is meant the place where a person lives and has his home. "To
208 constitute a new domicil, two things are indispensable: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except facto et animo. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the animus to change the prior domicil for another. Until the new one is acquired the old one remains. These principles are axiomatic in the law upon the subject." 39 U. S., 608; 21 Wall., 352; 14 How., 423.

Now, then, gentlemen of the jury, I have given you from the courts to which we look as authority, for the most part, the general rules by which you are to determine. You have heard the cases from which I extract the foregoing rules read in your hearing, and many others, and in the great diversity of facts you will see where the difficulty lies; and you have observed the methods by which the courts resolve the
209 question. In the light of these cases, and the thorough agreement we have had by counsel, we have now to weigh the facts in this case and say whether or not the domicil of Thos. N. Quarles was in Alabama when he died If so, you must find for the defendant. If his domicil was not in Alabama, you must find for the plaintiff. There is no other question in the case. No matter how hard or inconvenient it may be to pay a debt twice, as a matter of law and justice it is not paid twice unless the first payment was rightful. Payment to the wrong man is no payment. "While the definition of domicil is difficult, if not impossible, to determine as a matter of fact where it is in any given case, is in most instances easy and simple. It is only where the actual facts of residence are ambiguous and uncertain, in the absence of any settled and permanent abode, and where the intention of the party cannot be ascertained, that it becomes difficult. It then not uncommonly requires for its solution an in-
210 quiry into the habits, character, pursuits, domestic re- 100 Mass., 170.

lations, and, indeed, the whole history of the man from his youth up, depending in the end upon such preponderance of the evidence in favor of one or two or more places that the facts and circumstances tending to show a domicil there overbalance, *are* like proof tending to fix it elsewhere."

It is your business to weigh the proof in this case and determine this question of fact. I shall not trench on your functions as jurors by any argument on the facts, but it is my duty to aid you in the application of the law to the facts, by directing your attention to the considerations which should guide you in the performance of your duty in determining the question. There is no dispute about the fact that Quarles was born in Virginia. This was the domicile of his origin in the sense of the books when they speak of international questions on this subject and say that a native or dom-
211 icil of origin easily reverts. I think this doctrine has
35 Conn., 358. no application as between the States of this Union, but whether it does or not it has no application to the facts of this case, for it is not pretended that the intestate's domicil was in Virginia. When the intestate moved with his mother to Alabama, in his infancy, that State became the domicil of his choice in the sense of the law books; his mother's choice
93 U. S., 610. was his choice, and Alabama became his domicil and remained so until he acquired another. The burden of proving that he changed this domicil to Tennessee is on the plaintiff. He
93 U. S., 610. has discharged that burden when he proves that as a fact he removed to Tennessee and continued to reside there for many years. Such removal in fact and residence in fact implies, in the eye of the law, an intention to change the domicil from Alabama to Tennessee; the plaintiff need not prove declarations of that intention; it is sufficiently proved by the mere act of removal and actual residence in Tennessee; by these facts alone the intention is manifested and we have in
212 the facts themselves a concurrence of the fact of residence and the intention to remain as a prima facie presumption of domicil. This is what the law books read to us mean when they say: "The where a man lives is taken to
21 Wall., 352. be his domicil until facts adduce' establish the contrary."

5 Heisk., 46; 1 Bos. Cal., 230. "A man is prima facie domiciled at the place where he is resident at the time of his death."

This is a most important rule for your consideration, and furnishes you, in this case, a starting point. There can be no doubt, if you resolve the somewhat contested fact of Quarles' intention to return to Memphis after his trip to Ala., during which he was killed, in favour of Tennessee. You will look to the testimony and say whether by the act of going to Alabama he changed his prima facie domicil to that State. If you find he only went there on a visit, or temporarily with an intention of coming back to Memphis, the fact of his going there and his accidental death there

213 does not affect the question before you; in that case Tennessee remained his prima facie domicil.

Now, then, if you find that fact for the plaintiffs, we start with Tennessee, proved by actual residence to be the domicil of his choice and a presumption of its continuance as such. He who repels this presumption, arising from actual residence, and denies that Tennessee was the domicil of his choice, has cast upon him the burden of disproving it; because "where 14 How.
a person lives is taken prima facie to be his domicil until other facts establish the contrary." The defendant, therefore, has cast upon him, by this rule, the burden of disproving to you' satisfaction that the domicile was in Tennessee.

The defendant properly says that "residence does not con- 5 Heisk, 46.
stitute a domicil, though it is prima facie evidence of it. Residence, for however long a time it may be continued, cannot constitue a domicil without the intention of permanently making it a home; nor can the shortness of time in
214 which the new home is enjoyed defeat the acquisition when accompanied with the intention."

The defendant, therefore, undertakes to prove that Quarles left Alabama with the intention to keep that State as his domicil or permanent home; that he always kept up an intention of returning there; that he never did intend to make Tennessee his domicil or permanent home; that notwithstanding his long continued residence in Tennessee, & his business pursuits, and notwithstanding all the circumstances which the plaintiffs prove as showing his intention of leaving here indefinitely, his real intention was that during all this time Alabama should be in fact his domicil, and not Tennessee. If such a continuous and always fixed intention has been proven to you' satisfaction by the testimony offered by the defendant, or otherwise in the case, there is no doubt of the law on the subject. It would defeat the presumption
215 arising from actual residence, unless, on the other hand, you are convinced from the proof offered by the plaintiffs that his intention to remain in Tennessee (or at Memphis) has been demonstrated. I caution you that the question is not whether Quarles, having become domiciled in Tennessee, has changed it to Alabama, but whether it ever was in fact in Tennessee. The intention to keep Alabama as his permanent home and abiding place, notwithstanding all the facts and circumstances in the case, must be proved to you by the defendant. That is your only inquiry. Has that fact been satisfactorily proven to you? This is the only question you have to determine.

The Supreme Court of the United States says that inten- 14 How., 423.
tion may be inferred from the circumstances or condition in which a person may be as to the domicil from which he has removed in fact. Hence you may look to the condition of the man in respect to his domicil as it existed when he
216 left, and all along during the twelve or fifteen years during which he was continuously absent from it, with

occasional visits to his mother, who remained there; you may look to his mother's condition all the time and say whether those facts and circumstances indicate an intention to keep that as his abiding place, or whether they were such as would make a residence and domicil elsewhere necessary or desirable. And so you may look to every fact and every circumstance admitted in evidence before you which throws any light on the question whether he intended to remain in Memphis or intended to return to Alabama. Change of domicil does not depend so much upon the intention to remain in the new place for a definite or indefinite period as upon its being without an intention to return to the former residence as a permanent abiding place. An intention to return at a remote and indefinite period to the former place of residence will not control if the other facts give the new residence the character of a permanent home and place of abode. The intention to remain and make the new place the domicil when the residence is not in its nature temporary, but permanent, may be implied from its permanent character, or the intention to return may be implied from its temporary character, notwithstanding vague and loose declarations either way. The logic of the whole subject, when you come to weigh acts and conduct with declarations, is expressed in the trite maxim, "Actions speak louder than words." The right of election by expressed intention cannot prevail over actual residence for an indefinite time by any floating intention to return at some future period. It must be more definite and amount to an actual purpose, kept up and never abandoned, and not inconsistent with the conduct and acts of the party, or other intentions manifested by acts and conduct or inconsistent declarations. Of course the workings of a man's mind, his intention or mental purpose is not absolutely known to any one but himself; whatever he expresses as his intention by words must be consistent with his acts, or the declaration cannot prevail as evidence over the acts. The result is that if the place of actual residence is prima facie the domicil, unless there be some motive for that residence not inconsistent with a clearly established intention to retain a permanent residence in another place, and you are to find the fact whether or not in the proof before you, this prima facie presumption has been overturned. Anything else I should say to you by way of reviewing the proof in a case like this would trespass on your ground of inquiry. We have had full argument from the best of lawyers, both on the law and the facts, and in the light of the rules of law as we find them it is for you to review the testimony pro and con; to take every fact and circumstance, weigh it carefully, and say whether or not Thos. A. Quarles always intended to keep Alabama for his permanent abiding place, or whether he intended to remain indefinitely where lived and kept his business, without any fixed purpose to go back to Alabama as a

8 Allen, 352.

100 Mass., 171.

217

37 Ill., 387.

34 Miss., 602.

14 How., 263.

218

place of permanent residence. If you find from the evidence that Quarles at the time of his death was domiciled in Memphis, then you must find for the plaintiff for the full amount shown to be due from the defendant to Quarles at the time of his death, together with six p'r cent. interest thereon, it being admitted by defendant that he agreed to pay inter-
219 est to Quarles from January 1st, 1866, *evidence that Quarles at the time of his death was domiciled in Memphis, then you must find for the plaintiff for the full amount shown to be due from the defendant to Quarles at the time of his death, together with six per cent. interest thereon, it being admitted by defendant that he agreed to pay interest to Quarles from January* 1, 1866.

The plaintiff requested the following instructions, which were refused:

ELLETT, ADM'R,
vs.
WILKINS.

1. When Quarles left Memphis, in Jan'y, 1866, he went for temporary purposes only, either on a visit or for the double purpose of a visit and investigation of the affairs of his deceased mother. His intention was to return to Memphis in four or five weeks. This fact of his intention to return to Memphis in a few weeks is shown by Quarles' letters of
220 dates of June 29, '65, June 20, '65, and Jan'y, 1866, by the letters of def't, Wilkins, of dates April 20th, 1866, and Feb'y 23, '66, by the testimony of def't, Wilkins, on the former trial, and by the testimony of def't's witness, Afflick, and by the testimony of def't, Wilkins, as now delivered to you; and there is no contradicting testimony. You will therefore treat the question of domicil as if Quarles had died in Memphis.

2. By the uncontradicted proof in this case it appears that plaintiff's intestate, T. N. Quarles, came to Memphis, in the State of Tennessee, prior to the year 1856; such of the witnesses as fix the exact date of his arrival putting it in the year 1851; that his actual residence was in Memphis continuously from that time until his death, in the month of January, 1866; that prior to the year 1856 he was engaged as clerk or salesman in the store of one King, & perhaps other persons; & that in the year 1856 he entered the service as clerk or salesman of the firm of F. H. Clark & Co., and that he continued in that employment down to
221 the time of his death. It appears, also, from the defendant's own proof that it was the purpose of Quarles, so soon as he should get money enough, to engage in business on his own account, and to continue to prosecute such business until he should get what he deemed to be a fortune sufficient to justify him in retiring from business.

Upon these facts the court charges you to find the domicil of Quarles to have been, at the time of his death, in the State of Tennessee, notwithstanding you may believe that during all the time he had his actual residence in Memphis he intended to return to Alabama after he should have gotten a fortune.

Under such a state of facts, the law regards the purpose to remain in

Memphis until a fortune should be gotten as the primary or predominant intent, & that of returning to Alabama as secondary or contingent. The getting of a fortune may or may not consume a lifetime; but the intention to remain until one should be gotten is, in the eye of the law, an intention to remain permanently or indefinitely, as contradistinguished
222 from intention to remain temporarily, or for a special purpose, & fixes the domicil at the place where he actually resides in the prosecution of such intent."

And after the refusal of the court to charge as thus requested, the plaintiff asked the following charge:

3. Domicil, in its ordinary acceptation, is the place where a person has his actual residence; but in its strictly legal sense it means the place of his fixed abode or home, the principal seat of his affairs, where his present interests and prospects are centred, and from which, when absent, he regards himself as on a visit or journey, and to which he intends to return when his journey or visit has been completed.

The law conclusively presumes that every man has a domicil somewhere, and, therefore, when a domicil once attaches it continues till another is acquired.

The place of one's actual residence is presumed to be his domicil till the contrary is made to appear.

223 If a person go from his domicil and reside at another place for a temporary purpose or object, intending at the time he leaves to be temporarily absent and to return when such temporary object or purpose shall be accomplished, and keeps up the intention and acts consistently with it, there is no change of domicil, even though a series of years. But if a person leave his domicil and actually reside at another place with the intention, at the time he goes, of remaining there for an indefinite , or of making it his present fixed abode, that place immediately becomes his domicil in fact and in law. The fact that he may afterwards conclude and declare his intention to return at some remote and indefinite time, either to his former domicil or to go elsewhere, cannot affect the character of his domicil, where it may then be established. So long as he remains there it is his domicil; and in order to regain his former one, or acquire another elsewhere, he must carry into execution his purpose by abandoning his present residence and actually residing in his former
224 domicil or other place with the intention of remaining there for an indefinite time, or permanently.

While intention is a necessary element or constituent in the law of domicil, yet this is to be ascertained more reliably from the acts of the party whose domicil is in question than from his declarations. Declarations are only entitled to be considered where the intention is rendered doubtful by apparently inconsistent or contradictory acts of the party, as where he resides part of his time at one place, and part at another, or lives in one place and is engaged in business at another, or in some other way by his acts cast doubt upon the question. Where, as in this case, there is no such double residence or contradictory acts, declarations are entitled to very little or no weight whatever; nor are they in any case where they are inconsistent with the life and acts of the party. Their only proper office is to explain his acts, which, considered by themselves, leave his intention in doubt. Declarations of the party are therefore entitled to much
225

more weight when they are consistent with his life and acts than when inconsistent with them. Written declarations are more reliable, and should be given more weight than verbal ones, as they are apt to be made with more deliberation, and are not subject to the hazards of misconception, prejudice, interest, or treacherous memories of those who undertake to repeat them.

You are instructed that in this case the undisputed fact that Quarles resided and was engaged in business in Memphis for twelve or fifteen years raises a strong and continuing presumption that he intended to make it his home when he came, and that it was, both in law and in fact, his domicil.

If you find from the evidence that Quarles came to Memphis for the purpose of engaging in business, and with the intention of remaining here an indefinite time, or that having come without such intention afterward formed it, then you are instructed his domicil was in Memphis at the time of his death, notwithstanding you may believe from the
226 evidence that in 1864 or 1865 he declined to register and declared his intention to return to Alabama.

Even though you may believe from the evidence that Quarles entertained throughout his residence in Memphis a floating purpose, at some remote and indefinite time and upon uncertain contingencies, to return to Alabama, yet you should find for the plaintiff, if you fail to find from the evidence any more definite purpose to return than is afforded by such floating intention.

It is not your province or privilege, in determining the question as to where Quarles was domiciled at the time of his death, to consider any supposed matter of hardship, either upon the defendant, in having to pay the debt due Quarles to the plaintiff, after having once paid to Goodloe the same money, nor to consider the hardship upon the heirs or distributees of said Quarles in losing his estate by any supposed imposition or want of responsibility of said Goodloe. It is your simple duty to ascer-
227 tain from the evidence where Quarles was domiciled, the law determining the other questions in the case, except the amount due, which you must ascertain from the testimony. You are also instructed that the fact that the defendant consulted an attorney as to the propriety of making payment to Goodloe of the debt that Quarles is not to be considered by you in determining the question before you, as it has no proper bearing on the issue. You are instructed that the fact that Quarles was engaged as a clerk or book-keeper does not of itself make his object or purpose in coming to and remaining in Memphis a temporary one within the meaning of the law, and that it is incumbent upon the defendant to prove that his stay here was intended to be temporary in its object; and you are instructed that the making of a fortune or the accumulation of a competency or any other sum of money in business is not a temporary purpose or object within the meaning of the law.

The plaintiff having proven that Quarles resided and did busi-
228 ness for a series of years in Memphis, and was residing here at his death, it is incumbent upon the defendant to prove, by a preponderence of testimony, that his domicil was in Alabama, and unless you find the defendant has made such proof you must find for plaintiff.

No presumption or inference can be drawn from the fact of Quarles' death in Alabama that he was domiciled there, inasmuch as he was con-

fessedly on a visit at the time, and died from wounds inflicted by the discharge of a gun.

It is a maxim of the law and a principle of justice that where one of two innocent parties must suffer loss, he by whom act or omission the loss has been made possible should bear it.

There being no dispute in this case that Quarles, the decedent, actually resided and did business in Memphis for a term of twelve or fifteen years, the law presumes that his domicil was here, unless it is affirmatively shown that this long continued residence and employment was for a tem-
229 porary purpose, and was taken up here with the intention of returning to Alabama, and that such intention and purpose were continuous and uninterrupted throughout the entire period of such residence. You are instructed that the fact that Quarles was a clerk does not show that his residence here was for a temporary purpose, nor does the additional fact that he declared his intention to return to Alabama when he had made a fortune, or enough money to set himself up in business, impart to his residence here a temporary purpose or character within the meaning of the law. And as this is all that can properly be claimed for the testimony offered by the defendant, you are instructed to find for the plaintiff.

(Endorsed:) Ellett vs. Wilkins. Instructions asked by pl't'ff.

After the jury had been out considering their verdict for some time, they returned and presented to the court in writing the following
230 request and inquiry: "The jury wishes to know of the court if its charge in substance was that a residence of ten or fifteen years of unbroken continuance and an intention expressed of returning to his old home, yet never carried out, would constitute a domicile."

To this inquiry the court replied by saying, that involves the whole charge, and I will give you and did hand to the jury his written charge. To this action of the court defendant objected, and excepted at the time, and his objection was overruled and his exception allowed.

The jury returned a verdict in favor of the plaintiff for $6,182.95, whereupon defendant moved the court to grant him a new trial & to set aside said verdict, which the court refused to do, & proceeded to render judgment against the defendant.

To which refusal to grant a new trial, and to the rendition of said judgment, as well as for alleged errors in said charge and the admission of illegal evidence, the defendant excepted in law, and now
231 tenders this bill of exceptions, which is signed, sealed, & made part of the record.

E. S HAMMOND. [SEAL.]

(Endorsed:) No. 1145. Law docket. Semple Ellett, adm'r, &c., vs. J. S. Wilkins. Bill of exceptions. Filed May 24th, 1879. Bell W. Etheridge, c'lk.

Supreme Court of the United States.

Know all men by these presents that we, James S. Wilkins, as principal, and W. S. Bruce, as surety, are held and firmly bound unto Semple

Ellett as administrator of Thomas N. Quarles, dec'd, in the sum of twelve thousand three hundred and sixty-five $\frac{20}{100}$ dollars, to be paid to the said Semple Ellett as administrator, &c., executors, or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 29th day of May, 1879.

232 Whereas the above named James S. Wilkins hath prosecuted a writ of error *appeal* to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the circuit court of the United States for the western district of Tennessee.

Now, therefore, the consideration of this obligation is such that if the above named James S. Wilkins shall prosecute his said writ of error *appeal* to effect, and answer all costs, debt, and damages, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

JAMES S. WILKINS. [SEAL.]
W. S. BRUCE. [SEAL.]

Acknowledged before me this 20th day of May, 1879.

BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed) No. 1145. Circuit court of the United States, western district of Tennessee. Semple Ellett, adm'r of Thomas N. Quarles, dec'd, vs. James S. Wilkins. Writ of error bond to the United States Supreme Court. Filed the 24th day of May, A. D. 1879. B. W. Etheridge, clerk. H. E. Andrews, d. c.

233 Bond approved & accepted as good and sufficient as a supersedeas bond, this May 20th, 1879.

E. S. HAMMOND.

I, W. S. Bruce, make oath that I am worth and own, in my own name and right, unincumbered property in the State of Tennessee, liable to be levied on by execution at law, for the value, after paying all my just debts, of more than twelve thousand five hundred dollars.

W. S. BRUCE.

Sworn to & subscribed before me this 20th day of May, 1879, in open court.

BELL W. ETHERIDGE, *Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the western district of Tennessee, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said circuit court before you, between
234 Semple Ellett, administrator of T. N. Quarles, dec'd, is plaintiff, and James S. Wilkins is defendant, a manifest error hath happened,

to the great damage of the said James S. Wilkins, as by complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1879, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Su-
235 preme Court of the United States, and the seal of said circuit court, at Memphis, this 20th day of May, A. D. 1879, and 103rd of American Independence.

B. W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

(Endorsed.) No. 1145. Circuit court of the United States, western district of Tennessee. Semple Ellett, adm'r of T. N. Quarles, vs. James S. Wilkins. Writ of error. Issued the 24th day of May, A. D. 1879. B. W. Etheridge, clerk, H. E. Andrews, d. clerk.

UNITED STATES OF AMERICA:

To Semple Ellett, admistrator of T. N. Quarles, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in October, 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the circuit and western district of Tennessee, wherein James S. Wilkins is *is are* plaintiff
236 and you are defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the honorable E. S. Hammond, judge of the district court of the United States for the western district of Tennessee, this 24th day of May, 1879.

E. S. HAMMOND, *Judge.*

(Endorsed:) No. 1145. Circuit court of the United States, western district of Tennessee. Semple Ellett, adm'r of T. N. Quarles, dec'd, vs. James S. Wilkins. Citation. Filed the day of A. D. 187 . H. E. Andrews, clerk.

237 THE UNITED STATES OF AMERICA,
Sixth circuit and district of West Tennessee:

I, Bell W. Etheridge, clerk of the circuit court of the United States for said district of West Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of the original record and proceedings in said court as the same now appears of record and upon the

files in my office, in the following cause, to wit: Semple Ellett, adm'r, vs. J. S. Wilkins.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office in the city of Memphis, this 4th day of February, A. D. 1880, and of the Independence of the United States the 104th year.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*

(Indorsed:) No. 1145. Circuit court of the United States, district of West Tennessee. Semple Ellett, adm'r, vs. J. S. Wilkins.

(Indorsement on cover:) No. 180. James S. Wilkins, plaintiff in error, vs. Semple Ellett, adm'r of T. N. Quarles, dec'd. W. Tennessee C. C. U. S. Filed 7th February, 1880.

108-2,16

OFFICE SUPREME COURT U.S.
FILED
JAN 19 1883
JAMES H. MCKENNEY, CLK.

In United States Supreme Court.

JAMES S. WILKINS, Plaintiff in Error,

vs.

SEMPLE ELLETT, Administrator.

BRIEF.

POSTON & POSTON,
W. Y. C. & L. W. HUMES,
Counsel for Plaintiff in Error.

S. C. TOOF & CO., PRS. & LITHS. MEMPHIS.

In United States Supreme Court.

WILKINS
vs.
ELLETT, Adm'r. } No. 180.

BRIEF

—OF—

W. Y. C. & L. W. HUMES and POSTON & POSTON,

ATTORNEYS FOR PLAINTIFF IN ERROR.

The questions presented, in this case, all arise on the charge of the court as given to the jury, and on instructions requested by the defendant below, the plaintiff in error here, and refused by the court. The queries are: What ingredients or elements constitute domicile, and change of domicile? And, secondly, Can a debtor, in the domicile of the deceased, no administration having been taken out there, and no creditors existing there, make payment voluntarily to a foreign administrator; provided he act in good faith, and the foreign administrator inventory and return the collection as assets in his hands to the court appointing him; and, provided further, that that court take jurisdiction of and distribute part of the assets so received by the administrator; and, provided further, the plaintiff below took a part of the funds so distributed.

Thomas N. Quarles died in the State of Alabama; one Wm. Goodloe, of that State, took out letters of administration there. J. S. Wilkins, a resident of Memphis,

Tennessee, owed the estate $3,455, and being called upon at Memphis by Goodloe, as administrator, took the advice of counsel, and under that advice, paid the debt, and took a receipt. This was in February, 1865, and no administration had, at that time, been taken out in Tennessee, and none was, until June 4th, 1866, three days before the institution of this suit; there were no creditors in Tennessee or elsewhere. The plaintiff, Ellett, a resident of Virginia, and distributee, who took out the letters of administration in Tennessee, had previously appeared in the administration in the Alabama probate court, sought the removal of Goodloe as administrator, procured his resignation and the appointment of one Marston as administrator in Goodloe's stead, and from him took, as a distributee, a part of the Tennessee assets turned over by Goodloe to, and distributed by, the Alabama court and administration; and not until he had pursued this matter for nearly eighteen months in the Alabama probate court, did he seek to make Wilkins liable under a Tennessee administration.

This suit was instituted on the 7th day of June, 1866, being an action of debt, in the Circuit Court of the United States, at Memphis, Tennessee.

This cause has been before this court once before, and is reported in 9 Wallace R. 740, and in the case as then presented, the domicile of Quarles was established in Alabama, and this court decided that a voluntary payment to the Alabama administrator was good and valid as against the demand of the subsequently appointed Tennessee administrator.

The case was remanded, and again tried at the February term, 1878, before the Hon. John Baxter, circuit judge, and a jury, and resulted in a mis-trial.

In February, 1879, it was again tried before the Hon. E. S. Hammond, district judge, presiding in the circuit court, and a jury, and resulted in a verdict and judgment, on February 27th, 1879, for the plaintiff, for $6,182.95, principal and interest.

See Record, p. 10.

The cause is here upon a writ of error to reverse that judgment, for errors in the charge of the court, and in refusing to give instructions reqnested by the defendant below.

The decedent, Thomas N. Quarles, was born in Richmond, Virginia, in 1835; his mother, a widow, with him, her only child, removed, in 1839, to Courtland, Lawrence county, Alabama, and made that place her home until she died in 1864.

Thomas N. Quarles lived with his mother in Alabama from 1839 to 1856, during his entire childhood and boyhood, to near his majority.

See deposition of Semple Ellett, p. 39.

In 1856, Quarles entered, as clerk, the employment of F. H. Clark & Co., (Wilkins being the other member,) and remained in their employ until a short time before his death. He made no investments in Tennessee, but kept his money in hand in the control of his employers on interest; he never kept house, or bought, or rented a home in Memphis; he had a bedroom in one of the business blocks of the city, which he furnished. He boarded at restaurants and boarding houses; he was a man of very strong attachments, and very devoted to his mother, yet he never brought his mother to Memphis to live, nor proposed to do

so, but visited her in Alabama; he took no part in the rebellion, but remained quietly at Memphis, attending quietly to the duties of his clerkship, and saving his money. Quarles always spoke of and referred to Alabama as his home, and said that Tennessee was not his home; that he was not a Tennesseean, but an Alabamian, and therefore, refused to register as a voter in Tennessee, or to vote, though requested by his employer; and this after 1864.

See Record, pp. 66–67–68–69.

This proof, his invariable declarations and acts, asserting that Tennessee was not his home, but that Alabama was, came from his employer Wilkins, and from three intimate associates of Quarles, viz: Neiderer, p. 67; Brook, p. 68, and Afflick, pp. 68–69, and Jas. S. Wilkins, pp. 66–67.

This was the testimony tending to prove the domicile in Alabama.

ASSIGNMENT OF ERRORS.

Defendant Wilkins asked the court to give the following instructions, which were refused by the court:

1st. "That a domicile, once existing, continues until "another is acquired; and where a change of domicile is "alleged, the burden of proving such change rests upon the "party making this allegation. It being an undisputed fact "that Quarles, the deceased, was domiciled in Alabama at "the time he moved to Memphis, plaintiff must prove, not "only that he came to Memphis to engage in business, and "did engage in business; but also, that he came to Memphis, "and either at the time of his coming or during his resi-"dence, formed the intention to change his domicile from "Alabama to Memphis. Two facts must be proved in or-

"der to fix his domicile in Tennessee; first, residence in "Tennessee, and, secondly, intention to reside there per- "manently."

2nd. "If the jury believe, from all the testimony, "that Quarles came to Memphis, Tennessee, to seek em- "ployment and obtained the position of a clerk by the "month, or by the year, in the mercantile house of F. H. "Clark & Co. on a salary, and that he came, and thus ob- "tained and held the employment aforesaid with an inten- "tion, fixed and unaltered during his whole stay there, "not to make Memphis or Tennessee, his home, nor to "give up Alabama as his home, then they will find for the "defendant."

See pp. 69–70.

3rd. "To ascertain his intention, the jury may look "to and consider the following facts, if proved: that "Quarles had, from his infancy, until he was eighteen "years old, lived with his widowed mother in Lawrence "county, Alabama; that she had remained there as her "home up to a short time before his death; that he had "repeatedly during his residence in Memphis declared 'he "had come to Memphis because he was too feeble to labor "on a farm, and so soon as he made money enough he "would return to take care of his mother; that Tennessee "was not his home, but Alabama was;' that his employment "was a clerkship from year to year or month to month, which "he could terminate at any time; that he had made no invest- "ments in Tennessee, but kept his funds in hand with em- "ployers; that although his mother was a widow, depen- "dant on him and her own labor for a support, yet he did "not bring her to Memphis.

so, but visited her in Alabama; he took no part in the rebellion, but remained quietly at Memphis, attending quietly to the duties of his clerkship, and saving his money. Quarles always spoke of and referred to Alabama as his home, and said that Tennessee was not his home; that he was not a Tennesseean, but an Alabamian, and therefore, refused to register as a voter in Tennessee, or to vote, though requested by his employer; and this after 1864.

See Record, pp. 66–67–68–69.

This proof, his invariable declarations and acts, asserting that Tennessee was not his home, but that Alabama was, came from his employer Wilkins, and from three intimate associates of Quarles, viz: Neiderer, p. 67; Brook, p. 68, and Afflick, pp. 68–69, and Jas. S. Wilkins, pp. 66–67.

This was the testimony tending to prove the domicile in Alabama.

ASSIGNMENT OF ERRORS.

Defendant Wilkins asked the court to give the following instructions, which were refused by the court:

1st. "That a domicile, once existing, continues until "another is acquired; and where a change of domicile is "alleged, the burden of proving such change rests upon the "party making this allegation. It being an undisputed fact "that Quarles, the deceased, was domiciled in Alabama at "the time he moved to Memphis, plaintiff must prove, not "only that he came to Memphis to engage in business, and "did engage in business; but also, that he came to Memphis, "and either at the time of his coming or during his resi-"dence, formed the intention to change his domicile from "Alabama to Memphis. Two facts must be proved in or-

"der to fix his domicile in Tennessee; first, residence in "Tennessee, and, secondly, intention to reside there per- "manently."

2nd. "If the jury believe, from all the testimony, "that Quarles came to Memphis, Tennessee, to seek em- "ployment and obtained the position of a clerk by the "month, or by the year, in the mercantile house of F. H. "Clark & Co. on a salary, and that he came, and thus ob- "tained and held the employment aforesaid with an inten- "tion, fixed and unaltered during his whole stay there, "not to make Memphis or Tennessee, his home, nor to "give up Alabama as his home, then they will find for the "defendant."

See pp. 69–70.

3rd. "To ascertain his intention, the jury may look "to and consider the following facts, if proved: that "Quarles had, from his infancy, until he was eighteen "years old, lived with his widowed mother in Lawrence "county, Alabama; that she had remained there as her "home up to a short time before his death; that he had "repeatedly during his residence in Memphis declared 'he "had come to Memphis because he was too feeble to labor "on a farm, and so soon as he made money enough he "would return to take care of his mother; that Tennessee "was not his home, but Alabama was;' that his employment "was a clerkship from year to year or month to month, which "he could terminate at any time; that he had made no invest- "ments in Tennessee, but kept his funds in hand with em- "ployers; that although his mother was a widow, depen- "dant on him and her own labor for a support, yet he did "not bring her to Memphis.

"They may also look to and consider his verbal and "written declarations, if any such are proved, that Alabama "was his home, and that he persistently declared, if so "proved, Alabama to be his home, and refused to acknowl- "edge Tennessee as his home."

4th. "They may also look to and consider whether, "when applied to to vote in Tennessee, he invariably re- "fused to vote in municipal, county, and State elections, "and the reason given by him, if such reason was given, "that he was not a citizen of Tennessee, but was a citizen "of Alabama."

"That they may look to and consider the fact that "he refused to register as a voter in Tennessee for the "avowed reason that he was not a citizen of Tennessee, "but was a citizen of Alabama.

"Such refusals to vote and to register as a voter in Ten- "nessee because he was a citizen of Alabama, if proved, "are not casual conversations, but are solemn, verbal acts "of refusal to regard Tennessee as his home, and are enti- "tled to serious consideration by the jury, as proof of a "fixed purpose by Quarles not to give up Alabama as his "domicile or home."

5th. "The jury may also look to the fact that defen- "dant Wilkins when about to pay the money over to "Goodloe, the Alabama administrator, first asked the ad- "vice of counsel, and stated that Quarles was domiciled in "Alabama; they may look to this as some evidence of "what Quarles' intention as to domicile was."

6th. "Employment as a clerk from month to month, "or from year to year, in a mercantile house, such as that

"of Quarles in the house of F. H. Clark & Co., is a tempo-
"rary employment and not a permanent one."

7th. "The money having been paid to the Alabama
"administrator before the appointment of one in Tennes-
"see, and there being no Tennessee creditors, the payment
"was a valid discharge, without reference to the domicile."

8th. "Especially is the seventh instruction the law,
"as the Alabama probate court of Lawrence county took
"cognizance and jurisdiction of the assets, after they were
"transferred there, inventoried in that court, and that court
"actually distributed a portion of them to the distributees,
"including the present plaintiff, under the laws of Ala."

9th. "The present plaintiff is estopped to deny Ala-
"bama to be the domicile of the decedent, Quarles; be-
"cause he, the plaintiff, with a full knowledge of the fact
"of their transfer by Goodloe, the Alabama administrator,
"from Tennessee to Alabama, under his Alabama letters
"of administration, participated in a distribution of a part
"of the Tennessee assets, and had the Tennessee assets
"turned over by Goodloe to the Alabama administrator de
"bonis non, on Goodloe's resignation."

10th. "The acquisition of a new domicile does not
"depend simply on the residence of the party, nor on the
"length of time of such residence, though great length of
"time of such residence is strong proof of an intention to
"acquire the new domicile, but such residence must be ac-
"companied by actual intention of permanently residing
"in the new domicile."

11th. "No length of time of residence for a tempo-
"rary purpose, nor for a permanent purpose, will consti-

"tute a new domicile, if from the beginning and through-
"out the latter residence the person retained a fixed inten-
"tion of holding on to and not abandoning his old domicile,
"and not to create a new one."

12th. "If the testimony proves that Quarles, at sev-
"eral different times during his habitancy in Memphis,
"when importuned by acquaintances to vote and to regis-
"ter as a voter in Tennessee, declined and refused so to
"vote and so to register, for the reason, avowed at these
"several times, that he was not a citizen of Tennessee, but
"was a citizen of Alabama, the jury may look to such tes-
"timony as expressive of a fixed intention not to give up
"Alabama as his home and domicile during the entire time
"of his stay in Memphis, unless the testimony in the case
"shows a subsequent change of such intention. It is not
"necessary, in order to prove a continuous fixed intention
"to preserve his home and domicile in Alabama, to prove
"declarations made during all the time of his residence in
"Tennessee. Of course they will also consider all such
"declarations and acts as may be proved of the contrary
"intention, under the charge of the court."

13th. "If Quarles, when he left Memphis, in Janua-
"ry, 1866, did not intend to return, but intended to live
"in North Alabama, and went there and resided with that
"intent until his death, this would make his domicile in
"Alabama; and in order to ascertain his intention the jury
"may consider the following facts, if proved: that being
"employed by the year he left about the end of the year;
"that he made no express contract for the continuance of
"his employment, or for his return; that he was in very
"bad health; that he was to be gone for an indefinite time.

"Of course they will consider any other testimony in the "case throwing light on this point."

This instruction was refused by the court at the trial, and defendant then excepted thereto in law, and the same was then allowed by the court.

14th. "If the testimony proves there are no cred- "creditors of Thomas N. Quarles, deceased, either in Ten- "nessee or Alabama, and none of the distributees reside in "either of said States, and the defendant paid over the mon- "ey sued for to the Alabama administrator, on a showing of "proper letters of administration from the probate court of "Lawrence county, in the State of Alabama, this would "make Goodloe, the Alabama administrator, and the sureties "on his administration bond, liable to the distributees for "the money collected of defendant, as well as for the other "assets collected by Goodloe in Tennessee, and, therefore, "the payment by defendant to Goodloe, as proved, was a "proper payment, and discharged defendant, without ref- "erence to the question of domicile."

15th. "An eminent English judge, Dr. Lushington, has "said that although so many powerful minds have been ap- "plied to the question, there is no universally agreed defini- "tion of the term, no agreed enumeration of the ingredients "which constitute domicile."

This instruction was excepted to during the trial and at the time it was given, because its only effect on the minds of the jury was to confuse and mislead, and because it is not correct. The Supreme Court of the United States have given the following definition of the term, and enumeration of its ingredients: "A residence at a particular

place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." The ingredients are: "Residence in the new locality," and intention to change the prior domicile for the new one.

The second paragraph of the charge was also excepted to at the time of its being given, and the exception allowed. The paragraph is as follows:

16th. "Our own adjudged cases sufficiently establish the "rule that one who is residing in a place with the purpose of "remaining there for an indefinite period of time, and "without retaining and keeping up any animus revertendi, "or intention to return, to the former home, which he has "abandoned, will have his domicile in the place of his "actual residence. Where the question is one of national "domicile, this statement may not be correct, for such a "condition of facts might not manifest an intention of ex-"patriation; but it is accurate enough for cases like the "present, which relate to a change of domicile from one "place to another within the same commonwealth."

This instruction was excepted to on the trial, because it makes the change of domicile complete on a change of residence to the new place, and a purpose of remaining there for an indefinite time, however temporary the purpose may be, and however fixed, clear, and manifest may be the purpose of not remaining there as a home, and because it seeks to draw a distinction between a national domicile and one within the same sovereignty.

17th. Defendant also excepted to the following clause in the charge; said exception was made at the trial, and at the time said instruction was given, and was allowed by the court. Said clause is as follows:

"I wish to observe that what is said by our State Su-
"preme Court, and in all the books, as to distinctions be-
"tween national or political and civil domicile are not
"changes in or exceptions to the rules of law which gov-
"ern the question, but merely distinctions as to the quan-
"tum or amount of proof necessary to establish the inten-
"tion in the one case or the other. The rules of law are
"the same, but in their application the characteristics are
"allowed to enter as an element of evidence more or less
"useful in showing the real intention. It requires a greater
"amount of proof to show that a man intends to expatri-
"ate himself and become a foreigner, than that he intends
"to remove from one State to another in this Union of
"States, and still less, that he intends to remove from one
"place to another in the same State."

The defendant excepted to this instruction, because it drew a distinction wholly inapplicable to the testimony in the case, and tended to confuse and mislead the jury, and because the distinction is not law. A domicile depends on actual residence and intention to make the place of residence the permanent home, and has no necessary relation to expatriation.

The same facts which would change the domicile from Alabama to Tennessee would change it from Alabama to England, and the quantum of testimony necessary to the change in each instance would be the same.

18th. Defendant at the trial and when the same was given excepted to the next instruction given, and the exception was allowed by the court, which instruction is in the following words and figures, viz: "The term 'domicile' is of
"more extensive signification than residence, for to consti-

"tute domicile, two things must concur: first, residence; "and secondly, the intention of making it the home of the "party. But this distinction between residence and 'domi- "cile' has generally been applied rather to political ques- "tions, or those involving considerations of a man's national "character as a citizen of one country or another. In this "sense, Vattel defines it thus: 'The domicile is the habita- "tion fixed in any place with an intention of always stay- "ing there.' Vat. 163. Says the Supreme Court of Ten- "nessee, in a case construing our attachment laws: 'In "this sense, he who stops, even for a long time, in a place "for the management of his affairs, has only a simple habi- "tance there, but has no domicile.' This is national domi- "cile in the sense of the public law, by which the national "character of the person and the right of succession to "movable property are determined. But when used in "connection with subjects of domestic policy, as taxation, "settlement, voting, and the attachment law, the term "'domicile' has a more confined and restricted import, and "implies the same as residence; that is, the home or habi- "tation fixed in any place without a present intention of "removing therefrom."

19th. Defendant excepted to this instruction at the time it was given on the trial, and the exception was allowed; the defendant excepted because this instruction makes the term domicile, as applicable to this case, one of the same signification as residence, and as not requiring besides residence an actual intention to make it the home of the party; and because it declares domicile as applicable to this case, not to be within the definition of Vattel, "The domicile is the habitation fixed in any place with an intention of always staying there," and this instruction erroneously declares

that "domicile, as applicable to this case, means the same as residence, or mere habitation in any place without a present intention of removing therefrom;" but the instruction should declare distinctly that domicile, as applicable to this case, means actual residence in a place, accompanied with the intention of making it his permanent home, or with the intention of abandoning his former domicile, and of remaining in the new one as a permanent home. Although followed by three instructions, tending to correct it, yet it was certain to mislead the jury.

20th. To the instruction, "but when he undertook to pay to an administrator in Alabama, it was wrongful to do so unless Quarles' domicile was in Alabama," defendant excepted on the trial when it was given, because, as the testimony showed that no Tennessee creditors remained and no Tennessee distributees, the money could lawfully be paid to the Alabama administrator, especially as the Alabama probate court received in part the Tennessee assets, and distributed them to plaintiff and the other distributee without objection by them, and the administrator, Goodloe, filed as part of his inventory, and in his account for final settlement, the receipt of and statement of the money now sued for.

21st. To the following instruction defendant also excepted at the trial when given, and the same was allowed. Said instruction is as follows, viz: "The burden of proving that "he changed his domicile to Tennessee is on the plaintiff. "He has discharged the burden when he proves that as a "fact he removed to Tennessee and continued to reside "there for many years. Such removal in fact and resi- "dence in fact implies, in the eye of the law, an intention

"to change the domicile from Alabama to Tennessee. The "plaintiff need not prove declarations of that intention; "it is sufficiently proved by the mere act of removal and "actual residence in Tennessee. By these facts alone the "intention is manifested, and we have in the facts them- "selves a concurrence of the fact of residence and the in- "tention to remain as a prima facie presumption of domi- "cile. This is what the law-books read to us mean when "they say 'that where a man lives is taken to be his domi- "cile until facts adduced establish the contrary.' 'A man "is prima facie domiciled at the place where he is resident "at the time of his death.' This is a most important rule "for your consideration, and furnishes you in this case a "starting point. There can be no doubt, if you resolve the "somewhat contested fact of Quarles' intention to return "to Memphis after his trip to Alabama, during which he "was killed, in favor of Tennessee."

Defendant excepted to this instruction, because, first, it vests the change of domicile on "the mere act of removal and actual residence in Tennessee," saying that "by those facts alone the intention is manifested, and we have in the facts themselves a concurrence of the fact of residence, and the intention to remain." Defendant contended that it should have been submitted to the jury whether, coupled with the actual removal to and residence in Tennessee, the testimony did not show that the removal to and residence in Tennessee were or were not for a temporary purpose, as evidenced by the temporary character of his employment, as a clerk from month to month and year to year; and also a residence in Tennessee, however long, coupled with a fixed, unaltered determination to retain his domicile in

Alabama. If the testimony showed a removal to and residence in Tennessee for a temporary purpose, or such removal and residence coupled with a fixed and unaltered determination to retain his domicile in Alabama, then no such legal presumption as that given by the court would arise; such presumption, on an actual removal and mere residence, could only arise in the absence of testimony showing a different intention.

Secondly, because the court made the mere facts of removal and actual residence control the question of domicile, disconnecting them from and excluding the effect of the testimony as to the temporary character of the employment, and the fixed determination to retain his home in Alabama, and excluding all the other testimony on this point.

Thirdly, the latter part of this instruction decided the whole question of domicile as a fact against defendant, except the intention of Quarles to return to Memphis after his trip to Alabama, during which he was killed. It told the jury "there was no doubt in favor of Tennessee if they found Quarles intended to return to Memphis after his trip to Alabama," thus excluding all the testimony as to the intention of Quarles to retain Alabama as his home.

22d. The last clause of this instruction is in the words following: "You will look to the testimony and say, "whether by the act of going to Alabama he changed his "prima facie domicile to that State; if you find he only "went there on a visit or temporarily, with an intention of "coming back to Memphis, the fact of his going there, and "his accidental death there, does not affect the question "before you; in that case, Tennessee remained his prima "facie domicile."

Defendant excepted to this instruction on the trial, and at the time it was given. The last clause clearly implies Tennessee to be his domicile at the time he went to Alabama on his last trip, and at his death.

23d. The next sentence declares: "Now, then, if you "find this fact for the plaintiff, we start with Tennessee, "proved by actual residence, to be the domicile of his "choice, and a presumption of its continuance as such."

Defendant excepted to this instruction at the trial, and when given, because it declares expressly that actual residence proves the place of residence to be the domicile of choice.

24th. The following instruction also, "That where a person lives is taken prima facie to be his domicile until other facts establish the contrary," was excepted to by defendant when given, because it did not qualify the instruction by adding the qualifications to the rule, to-wit: where the accompanying proof does not show he is there for a special or temporary purpose, or keeping up a constant, unaltered resolution not to change his former domicile.

25th. To the following instruction: "The defendant, therefore, has cast upon him by this rule, the burden of disproving that the domicile was in Tennessee to your satisfaction;" defendant also excepted when given on the trial, and exception allowed; because it requires the defendant to establish the intention, not to change the domicile, and this not by a preponderance of the proof, but to the satisfaction of the jury. The true rule requires abandonment or change of domicile, and the intention so to change to be proved by very satisfactory evidence.

The same instruction is repeated in the next clause of the charge, as follows: "If such a continuous and always "fixed intention has been proven to your satisfaction by "the testimony offered by the defendant, or otherwise in "the cause, there is no doubt of the law. It would defeat "the presumption arising from actual residence, unless on "the other hand, you are convinced by the plaintiff that "his intention to remain in Tennessee has been demon-"strated."

To this defendant excepted, when given on the trial, because again the defendant is required to overthrow the prima facie case of mere residence by proof to the satisfaction of the jury, not by preponderance of testimony.

26th. Defendant also excepted at the same time to the sentence of the charge immediately preceding this, as a clear indication by the court of his opinion being in favor of plaintiff, and the last sentence destroys the previous instruction.

27th. The same exceptions were taken to the following clause: "The intention to keep Alabama as his permanent home and abiding place notwithstanding all the facts and circumstances in this case, must be proven to you by defendant." This was excepted to as a clear indication by the court to the jury that all the facts and circumstances in the case were opposed to defendant's theory, and he had to prove the contrary, not show it by a preponderance of proof, but prove it, whereas a mere preponderance of the testimony in favor of Alabama as Quarles' domicile at the time of his death entitled defendant to a verdict, and indeed the burden was on plaintiff. The court added to this last sentence the two following: "That is your only in-

quiry. Has that fact been satisfactorily proven to you? This is the only question you have to determine." To this defendant also excepted on trial, when given, on the same ground as the two last, that is, that if the preponderance of the testimony was in favor of the Alabama domicile on the whole case, then defendant was entitled to the verdict of the jury; and again, that mere residence did not prove the intent and the intention.

28th. The following instruction defendant also excepted to, when given, and the same was allowed by the court. The instruction was as follows, viz: "The Supreme Court "of the United States says 'that intention may be inferred "from the circumstances or condition in which a person "may be as to the domicile from which he has removed in "fact.' Hence you may look to the condition of the man "in respect to his domicile as it existed when he left, and "all along during the twelve or fifteen years during which "he was continuously absent from it, with occasional visits "to his mother, who remained there; you may look to his "mother's condition all the time, and say whether those "facts and circumstances indicate an intention to keep that "as his abiding place, or whether they were such as would "make a residence and domicile elsewhere necessary or "desirable."

Defendant excepted to this instruction, first, because it directed the attention of the jury to only a few unimportant circumstances, wholly failing to direct attention to others in the testimony, such as his claim of retaining Alabama as his home, his refusal to register as a voter in Tennessee, and his refusal to exercise the elective franchise because he was not a Tennesseean, and the temporary

character of his employment. Secondly, because it makes it turn, not on the intention, but whether the circumstances were such as would make a residence and domicile elsewhere necessary or desirable.

29th. Defendant also excepted at the trial, and when given, to the following instruction, viz: "Change of domi-"cile does not depend so much upon the intention to re-"main in the new place for a definite or indefinite period, "as upon its being without an intention to return to the "former residence as a permanent abiding place."

Defendant excepted to this instruction, because it makes a change of domicile to depend, not on the intention to remain in the new residence as a home, but simply on want of proof of an intention to return to the former home as an abiding place; thus a cardinal rule to fix a change of domicile is reversed.

30th. Defendant excepted at the time of trial, and when given, to the following instruction, and the exception was allowed. The instruction is as follows, viz: "The logic "of the whole subject, when you come to weigh acts and "conduct with declarations, is impressed in the trite maxim, "'actions speak louder than words.'"

Defendant excepted to this instruction, because it was telling the jury, in substance and effect, that the residence in Memphis for ten or fifteen years in the employment of clerk, was not and could not be overcome by the testimony of defendant showing the declarations of Quarles, however uniformly and solemnly made, that he had not given up Alabama as his home, nor his declarations denying his citizenship in Tennessee and refusing to vote or register as a voter.

31st. Defendant also excepted at the trial, and when given, to the following instruction, and the exception was allowed by the court. This instruction is as follows, viz: "The right of election by expressed intention cannot pre- "vail over actual residence for an indefinite time, by any "floating intention to return at some future period. It "must be more definite, and amount to an actual purpose, "kept up and never abandoned, and not inconsistent with "the conduct and acts, or other intentions manifested by "acts and conduct, or inconsistent declarations."

Defendant excepted to this instruction, because the first sentence is confused and calculated to mislead; and the latter sentence erroneously declares that an expressed election to retain the former domicile, however definite, and although it amount to an actual purpose, kept up and never abandoned, yet it cannot prevail if inconsistent with the conduct and acts of the party or other intentions manifested by acts or conduct, or inconsistent declarations; thus taking away from the jury the duty and power to weigh the conflicting testimony of acts, conduct, and declarations, and leaving them the simple function of deciding against defendant if they found acts, conduct, or declarations inconsistent with the uniform expressed election to retain the former domicile.

32d. To the next instruction defendant excepted, on the trial and when given, and the court allowed the exception. This instruction is in the words following, viz: "The re- "sult is that the place of actual residence is prima facie "the domicile unless there be some motive for that resi- "dence not inconsistent with a clearly established intention "to retain a permanent residence in another place."

To this instruction defendant excepted, because the same is not law and tends to confuse and mislead.

33d. Defendant in like manner excepted to the following instruction: "And you are to find the fact whether "or not, on the proof before you, this prima facie pre- "sumption has been overturned."

The defendant excepted to this, because it was improper and because the proper instruction in lieu was that upon all the testimony before the jury, if they believe the preponderance of proof was in favor of Alabama as the domicile of the deceased at the time of his death, they should find for the defendant.

34th. Defendant also excepted to the following instruction, viz: "And say whether or not Thomas N. Quarles "always intended to keep Alabama for his permanent "abiding place, or whether he intended to remain indefi- "nitely where he lived."

Defendant excepted to this instruction, at the time it was given on the trial, and the exception was allowed because it submits the wrong alternative question, and one well calculated to mislead the jury, because a residence in Memphis, with an intention to remain indefinitely, might be entirely consistent with an intention not to give up his domicile in Alabama; and then the domicile would be and remain in Alabama and not be changed to Tennessee.

Defendant excepted also to the whole charge at the trial and when delivered.

ARGUMENT.

Clearly the court below erred in refusing to give the first instruction asked by defendant below, "that a domicile, once existing, continues until another is acquired; and where a change of domicile is alleged, the burden of proving such change rests upon the party making this allegation. It being an undisputed fact that Quarles, the decedent, was domiciled in Alabama at the time he moved to Memphis, plaintiff must prove, not only that he came to Memphis to engage in business and did engage in business, but also that he came to Memphis, and either at the time of his coming or during his residence, formed the intention to change his domicile from Alabama to Memphis. Two facts must be proved in order to fix his domicile in Tennessee; first, residence in Tennessee, and secondly, intention to reside there permanently."

This instruction is accurately taken from the opinion of this court in Mitchell v. United States, 21 Wal. R. at page 353, saying: "A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, residence in the new locality; and second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the animus to change the prior domicile for another. Until the new one is acquired, the old one remains."

This decision was made in a case where the person having been domiciled at Louisville, obtained a permit from the military authorities to go into the Confederate lines, and went South on the 17th of June, 1861, took up his residence at Savannah, Georgia, and remained until the latter part of the year 1864, transacting business, collecting debts and purchasing cotton, until he collected 724 bales of cotton.

In the case of Jopp v. Wood, 4 De Gex, J. & S. R. 616, a man originally domiciled in Scotland went to and resided in Calcutta, India, first as a clerk, then as a planter, then as a merchant for years, yet the court held this long continued residence in India not proof of his domicile there, as there was no proof of his intention to make it his permanent home. Lord Knight Bruce, in delivering one of the opinions, said: "This man resided in India while "there for the mere purpose of his private business and "appears also to have retained the wish and intention of "returning finally to Scotland. A permanent residence in "India seems never to have been in his contemplation."

Lord Justice Turner, delivering an opinion in the same case said: "The point principally relied on in support of "the contention that there was a change of domicile from "Scotland to India, was the long continued residence in "India; but nothing is better settled with reference to the "law of domicile than that the domicile can be changed "only *animo et facto;* and residence may be decisive as to "the *factum*; it cannot, when looked at with reference to "the *animum*, be regarded otherwise than as an equivocal "act. The mere fact of a man residing in a place different "from that in which he has before domiciled, even although

"his residence there may be long and continuous, does not "of necessity, show that he has elected that place as his "permanent and abiding home. He may have taken up "and continued his residence there for some special pur- "pose, or he may have elected to make the place his tem- "porary home. But domicile, although in some of the cases "spoken of as home, imports an abiding and permanent "home, not a mere temporary one. The acquisition of a "new domicile involves an abandonment of the previous "domicile, and therefore to effect the change the animus of "abandonment must be shown."

The case of Collier v. Rivaz, 2 Curteis R. 855, was a case of succession; Philip Rivaz resided from 1814 to 1819 at Brussels, with occasional excursions of pleasure and business. The court say at page 855, "Length of time will not alone do it, intention alone will not do it, but the two taken together do constitute a change of domicile." The case of Hoskins v. Mathews, 35 Eng. Law and Eq. R. 532, settles, so far as the opinions of Lord Justices Turner and Knight Bruce can, that no matter how long the residence actually is, nor how the fact of residence, yet, still the question of the animus, or intention, is one to be established by proper testimony in addition.

"A man is presumed to hold his domicile until another is obtained; and to constitute this change, the fact and the intention must concur."

Layne v. Pardee, 2 Swan (Tenn.) R. 232.

"But domicile is a term of more extensive signification than residence; for, to constitute domicile two things must

concur: first, residence; and secondly, the intention of making it the home of the party."

Foster v. Hall, 4 Hum. 348.

Story Confl. Laws, sec. 344.

"Residence, for however long a time it may be continued, cannot constitute domicile, without the intention of permanently making it a home; nor can the shortness of time in which the new home is enjoyed defeat the acquisition when accompanied with the intention, for in the latter there would be the factum and the animus."

Horne v. Horne, 9 Ind. L. 108.

"If a person has actually removed to another place with an intention of remaining there an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

2 Sneed R. 424. Story's Confl. of Laws, sec. 46.

"By domicile, two things are implied: the residence of the person, and *the intention to make it his home.*"

Allen v. Thomason, 11 Hum. R. 537.

White v. White, 3 Head R. 409, 410.

"Two things, then, must concur to constitute domicile: first, residence, and secondly, the intention of making it the home of the party. There must be the fact, and the intent; for, as Pothier has truly observed, a person cannot establish a domicile in a place, except it be *animo et facto.* In many cases actual residence is not indispensable to retain a domicile, after it is once acquired; but it is retained *animo solo*, by the mere intention not to change it, or adopt another. If, therefore, a person leaves his home for tem-

porary purposes, but with an intention to return to it, this change of place is not, in law, a change of domicile."

Story's Confl. of Laws, sec. 44, 66.

"There is a wide distinction between domicile and residence. To constitute a domicile, two things must concur: first, residence; second, the intention to remain there. Residence is to have a permanent abode for the time being, as contradistinguished from a mere temporary locality of existence."

Long v. Ryan, 30 Gratt. (Va.) 718.

Hayes v. Hayes, 74 Ill. R. 312.

Where a widow remarried, and after living for some time at her first husband's residence in Georgia, removed with her minor children to Tennessee, where her second husband became the pastor of a church, but they always avowed their intention to return; *Held*, they did not lose their domicile in Georgia, and were entitled to a homestead from the estate of the first husband.

Harkins v. Arnold, 46 Ga. R. 656.

The intent and the facts should concur, in order "to establish the domicile of a person who removes from one place to another, while working for wages."

Moreland v. Davidson, 71 Pa. St. R. 371.

Reid's Appeal, 71 Pa. St. R. 378.

Domicile is controlled by intention, evidenced by declarations and circumstances. A lady, native born of the United States, and for many years a resident of New York city, was absent a number of years in Europe, and resided first at one place and then at another as her health and comfort had required, made her will at Nice, in which will

she declared, that she considered her home and residence as still being in the city of New York, "in my beloved country, the United States of America." *Held, this should be regarded as clear evidence* of the intention of the testatrix in respect to domicile.

Dupuy v. Seymour, 64 Barb. (N.Y.) 156.

The second assignment of error is the following:

"If the jury believe from all the testimony, that Quarles "came to Memphis, Tennessee, to seek employment, and "obtained the position of a clerk by the month or by the "year, in the mercantile house of F. H. Clark & Co. on a "salary; and that he came, and thus obtained, and held "the employment aforesaid, with an intention fixed and "unaltered, during his whole stay there, not to make Mem-"phis or Tennessee his home, nor to give up Alabama as "his home, then they will find for the defendant."

Was there testimony tending to prove the facts on which this instruction is based?

Quarles' mother was a widow, and he was her only child. She had moved from Richmond, Virginia, in 1839, to Lawrence county, Alabama, taking Quarles, then a child four years old, with her. She permanently resided in Lawrence county from 1839 to her death in 1864; she raised Quarles in Lawrence county, Alabama, and being too delicate for farming he came to Memphis in 1856 to obtain employment to make money for himself and mother. He never married, nor bought a home in Memphis, nor brought his mother to Memphis to live; he kept and furnished a bed room in an upper story of one of the business buildings, and boarded at restaurants and boarding houses; he made

no investments of his means in Tennessee, but during his whole stay, held his accumulations in the hands of his employers at six per cent. interest, and declared to his employer and his daily associates that Memphis was not his home, but Alabama was; he refused to vote at Memphis repeatedly, and refused to register as a voter, giving as his reason at the time, that Tennessee was not his home; that he was not a citizen of Tennessee, but his home was still in Lawrence county, Alabama, and he was a citizen of Alabama, and he intended ultimately to return there to reside permanently.

See the answers to the 3d, 5th, 6th and 7th interrogatories of Semple Ellett's deposition, p. 38, 39 of the printed record.

See also testimony of James S. Wilkins, p. 66, 67 of record.

See also testimony of Neiderer, p. 67, 68.

See also testimony of A. Brook, p. 68.

See also testimony of A. Afflick, p. 68, 69.

"A man is presumed to hold his domicile until another is obtained; and to constitute this change, the fact and intention must concur."

Layne v. Perdue, 2 Swan R. 235.

In Jopp v. Wood, 4 De Gex J. & S. 616, decided in 1865, the party resided for business purposes in Calcutta over fifteen years. He was before domiciled in Scotland; the court say: "He resided in India, while there, for the mere purpose of his private business, and appears also to have retained the wish and intention of returning finally to Scotland. A permanent residence in India seems never to have been in his contemplation."

In the same case Lord Justice Turner says: "The point principally relied upon in support of the contention that there was a change of domicile from Scotland to India was the long continued residence in India. But nothing is better settled with reference to the law of domicile than that the domicile can be changed only *animo et facto*, and although residence may be decisive as to the *factum*, it can not, when looked at with reference to the animus, be regarded otherwise than as an equivocal act. The mere fact of a man residing in a place different from that in which he has before domiciled, even although his residence there may be long and continuous, does not of necessity show that he has elected that place as his permanent and abiding home. He may have taken up and continued his residence there for some special purpose, or he may have elected to make the place his temporary home. But domicile, although in some of the cases spoken of as home, imports an abiding and permanent home, not a mere temporary one.

"The acquisition of a new domicile involves an abandonment of the previous domicile, and indeed therefore, to effect the change, the animus of abandonment must be shown.

"In general, the place where an unmarried man has his business is his domicile, but not conclusively so."

Malone v. Lindley, 1 Phil. (Pa.) R. 192.

"Residence and business are not conclusive as to domicile."

Folger v. Slaughter, 19 La. Ann. 323.

3 Maine R. 457.

In White v. Brown, 1 Wallace, jr., 217, Aspden, whose domicile was in question, was born in this country in 1748

prior to the revolution. He was a Tory, and went to England in 1776. He stayed there till July 1785 (nine years), when he came back to America and stayed twenty-three days; went back to England, and stayed there till Sept., 1791 (six years), then came and stayed here ten months, going back to England in 1792. Here he lived for the residue of his life, *thirty-two years*, having been in America once in that time, and staying here twenty two months. "*His domicile in America was held to have been kept alive by a declared intention to come back.*"

In De Bonneval v. De Bonneval, 1 Curteis R. 856, the Marquis de Bonneval was born in France in 1765, of French parents; lived there till the revolution of 1792 (twenth-seven years); came to England, and stayed there until 1815 twenty-three years), receiving an allowance as a French emigrant; returned to France with the Bourbons in 1815; returned to England on Napoleon's arrival in France in that year, but went back after his defeat in June. From that time, June, 1815, till 1836 (twenty-one years), when he died, he lived occasionally in France, and occasionally in England. Notwithstanding his long residence in England of over a quarter of a century, and his having a residence there, he was held to be domiciled in France.

See also Sears v. City of Boston, 1 Metcalf R. 250, where the court hold: "That if the departure from one's fixed and settled abode be for a temporary purpose, whether it be business or pleasure, accompanied with an intent of returning and resuming the former place of abode as soon as such purpose is accomplished, such person continues his domicile at the former place of abode."

The third, fourth and fifth assignments of error, all are similar errors violative of the same rule of law, viz: that it is the duty of the court in giving the charge to the jury to refer to the leading facts given in evidence, and instruct the jury that if they believe this testimony they must find accordingly.

See Pennsylvania v. Ravenel, 21 How. R. 103.

These assignments of error are in the following words:

"Third. To ascertain his intention, the jury may look to and consider the following facts, if proved: That Quarles had, from his infancy until he was eighteen years old, lived with his widowed mother, in Lawrence county, Alabama; that she had remained there as her home up to a short time before his death; that he had repeatedly during his residence in Memphis declared he had come to Memphis because he was too feeble to labor on a farm, and so soon as he had made money enough he would return to take care of his mother; that Tennessee was not his home, but Alabama was; that his employment was a clerkship from year to year, or month to month, which he could terminate at any time; that he had made no investment in Tennessee, but kept his funds in hand with employers; that although his mother was a widow dependent upon him and her own labor for support, yet he did not bring her to Memphis.

"They may also look to and consider his verbal and written declarations, if any such are proven, that Alabama was his home, and that he persistently declared, if so proven, Alabama to be his home, and refused to acknowledge Tennessee as his home.

"They may also look to and consider whether, when ap-

plied to, to vote in Tennessee, he invariably refused to vote in municipal, county and State elections, and that the reason given by him, if such reason was given, that he was not a citizen of Tennessee, but was a citizen of Alabama; that they may look to and consider the fact that he refused to register as a voter in Tennessee, for the avowed reason that he was not a citizen of Tennessee, but *was* a citizen of Alabama.

"Such refusals to vote and to register as a voter of Tennessee because he was a citizen of Alabama, if proven, are not casual conversations, but are solemn, verbal acts of refusal to regard Tennessee as his home, and are entitled to serious consideration by the jury, as proof of a fixed purpose by Quarles not to give up Alabama as his domicile or home.

"The jury may also look to the fact that defendant Wilkins, when about to pay the money over to Goodloe, the Alabama administrator, first asked the advice of counsel, and stated that Quarles was domiciled in Alabama! They may look to this as some evidence of what Quarles' intention as to domicile was."

The court refused to give each of these plain instructions calling the attention of the jury to the evidence tending to establish the defense; and did not give it in his own charge to the jury. But on the contrary, he assumed this question of fact against the defendant in his charge, saying: "There "can be no doubt, if you resolve the somewhat contested "fact of Quarles' intention to return to Memphis after his "trip to Alabama, during which he was killed, in favor of "Tennessee."

See Record, p. 75, last sentence of 3d paragraph.

So the court not only refused to give the above instructions, but decided the fact himself against the defendant, notwithstanding it was the vital point of fact in contestation.

The tenth instruction should have been given as requested; it is in these words:

"The acquisition of a new domicile does not depend simply on the residence of the party, nor on the length of time of such residence, though great length of time of such residence is strong proof of an intention to acquire the new domicile, but such residence must be accompanied by actual intention of permanently residing in the new domicile."

Layne v. Perdue, 2 Swan R. 235.
Jopp v. Wood, 4 De Gex J. & S. R. 616.
Malone v. Lindley, 1 Phil. (Pa.) R. 192.
Folger v. Slaughter, 19 La. Ann. 323.
3 Maine R. 457.
White v. Brown, 1 Wallace, jr., 217.

The court, in his charge to the jury, at page 80–81, expressly excluded and denied the foregoing instruction, and asserted that the rule presented in that instruction applied "to national domicile, in the sense of the public law, by which the national character of the person, and the right of succession to movable property are determined. But when used in connection with subjects of domestic policy the term domicile has a more confined and restricted import, and implies the same as residence; that is, the home or habitation fixed in any place without a present intention of removing therefrom."

The court erred in the refusal to give the 11th instruction requested by defendant; it is in the words following:

11th. "No length of time of residence for a temporary "purpose, nor for a permanent purpose, will constitute a "new domicile, if from the beginning and throughout the "latter residence the person retained a fixed intention of "holding on to, and not abandoning his old domicile, and "not to create a new one."

This instruction only presented the universally admitted principle that "to constitute the new domicile, two things "are indispensable; first, residence in the new locality, and "second, the intention to remain there. The change can-"not be made except *facto et animo*."

Both are alike necessary. *Either without the other is insufficient.* Mere absence from a fixed home, however long continued, cannot work the change. *There must be the animus to change the prior domicile for another.* Until the new is thus acquired the old one remains.

Mitchell v. United States, 21 Wal. R. 350.

The court erred in the refusal to give the twelfth instruction, as requested by the defendant below. It is in these words:

"If the testimony proves that Quarles, at several differ-"ent times during his habitancy in Memphis, when im-"portuned by acquaintances to vote, and to register as a "voter in Tennessee, declined and refused so to vote, "and so to register, for the reason avowed at these several "times, that he was not a citizen of Tennessee, but was a "citizen of Alabama, the jury may look to such testimony "as expressive of a fixed intention not to give up Alabama

"as his home and domicile during the entire time of his "stay in Memphis, unless the testimony in the case shows "a subsequent change of such intention. It is not neces- "sary, in order to prove a continuous fixed intention to "preserve his home and domicile in Alabama, to prove "declarations made during all the time of his residence in "Tennessee. Of course they will also consider all such "declarations and acts as may be proved of the contrary "intention, under the charge of the court."

It certainly requires no argument to show the strong and conclusive effect of these verbal acts of Quarles to establish his fixed determination to retain Alabama as his domicile, and not to change it to Tennessee.

Wilkins, the employer and intimate friend of Quarles; Ed. Neiderer, his mess-mate for several years; A. Brook, a merchant whose business house adjoined that of F. H. Clark & Co., and who knew Quarles as an intimate social acquaintance from 1856 to 1865, and A. Afflick, a clerk with Quarles in the house of F. H. Clark & Co. during Quarles' entire stay in Memphis,—all testified to these refusals to vote and to register as a voter in Tennessee.

J. S. Wilkins, at p. 66, testified:

"That he had known him on several different occasions to refuse to register as a voter and vote for State, county and municipal officers in Memphis, on the express ground that he was not a Tennesseean, but an Alabamian, and therefore not entitled to vote in Tennessee." "Witness said he remembered on one occasion, when there was considerable excitement about the result of an election, he himself asked Quarles as a favor to go and vote, and he re-

fused to do so, saying he could not, because he was not a Tennesseean, but an Alabamian, and that was his home. These refusals all occurred after 1864."

See record, p. 66.

Edmond Neiderer, at p. 67, near the bottom, testified—

"That in 1865, a man came up to him and me in my business house, and requested us both, and urged us to go and register as voters and take his ticket to vote in the coming election. Quarles said, 'I *will not vote*, and I won't register as a voter, for I am not entitled to do so, because my home is in Alabama, and I am an Alabamian, not a Tennesseean.' Again, at another time, I heard Mr. Wilkins request him to vote, and he would not vote, because he was an Alabamian, and not a Tennesseean."

A. Brook, at p. 68, testified—

"That on one occasion, in witness' business house, Quarles and he were sitting talking together, when some one came in and requested Quarles to go and register as a voter. Quarles refused, and avowed as the reason why he would not, that his home was no in Tennessee; that he was an Alabamian, and therefore, he could not register as a voter in Tennessee. The gentleman or person was somewhat persistent, and Quarles became somewhat irritated, and repeated his reason, after the man had gone out, to witness. Witness, in all his long acquaintance with him, never heard him acknowledge Tennessee as his home, but invariably, when speaking of it, claimed Alabama *as* his home, and said he was going back there as soon as he could make enough to retire on and support him and his mother."

A. Afflick, on p. 69, testified—

"That he had known him to refuse to vote at elections held in Memphis, Tennessee, for municipal, county and State officers, upon the express ground that he was not a citizen of Tennessee, but a citizen of Alabama."

He also testified "that a short time before his death he declined to register as a voter, under a recent act of the Legislature of Tennessee regulating the right of voting, and he did so upon the express declaration at the time that he was not a citizen of Tennessee, but was a citizen of Alabama."

See record, p. 69.

The court erred in the refusal to give the 13th instruction asked by defendant. It is in these words:

"If Quarles, when he left Memphis in Jan., 1865, did not intend to return, but intended to live in North Alabama, and went there and resided with that intent until his death, this would make his domicile in Alabama; and in order to ascertain his intention the jury may consider the following facts if proved: that he made no express contract for the continuance of his employment, or for his return; that he was in very bad health; that he was to be gone for an indefinite time. Of course they will consider any other testimony in the case throwing light on this point."

The evidence on which this instruction was based is found in the testimony of Wilkins, at page 66, and Neiderer, at page 68.

Wilkins testified: "When Quarles left he was in bad health, and they made no express arrangement for his return to their service, and said nothing about it, though he expected him to return."—p. 66.

Neiderer said: "When leaving for Alabama in January, 1865, he said he was going home to wind up his mother's affairs; that he had been barred out from there by the war. He said he was in bad health, and had erysipelas. He spoke also of inheriting a farm in Alabama."

Notwithstanding this was the testimony, the court refused the above instruction, and in his charge at the bottom of page 82, in referring to this point, wholly omitted any reference to this testimony, though he called attention to his going to Alabama, and in such a way as to exclude this testimony from the jury as of any materiality, saying:

"You will look to the testimony and say whether, *by the act of going to Alabama*, he changed his prima facie domicile to that State. If you find he only went there on a visit or temporarily, with an intention of coming back to Memphis, the fact of his going there and his accidental death there does not affect the question before you; in that case Tennessee remained his prima facie domicile."

The court erred in not giving the following instruction as asked:

7th. "The money having been paid to the Alabama administrator before the appointment of one in Tennessee, and there being no Tennessee creditors, the payment was a valid discharge, without reference to the domicile."

See p. 71 of record.

The section 2047 of the Code of Alabama requires the administrator to collect and take into his possession all the goods and chattels, money, books, papers and evidences of debt of the intestate, without limiting him to such as are found in Alabama.

See Code of Ala., sec. 2047, p. 440.

"The administrator is authorized to receive any debts or property which at the time existed in any State, and whatever property was received by him, as belonging to the intestate and as part of his assets, he was bound to administer, wherever it might have been at the time of the death of the intestate." Pratt v. Northam, 5 Mason R. 107-9.

"An executor or administrator of a creditor dying in another State, and becoming lawfully possessed, as part of his assets, of a bond given and secured by a mortgage upon lands in this State, is competent to receive payment and give acquittance in this State without first resorting to the probate court here." Doolittle v. Lewis, 7 John Ch. R. 49.

The record shows that a large part of Quarles' personal effects, furniture, etc., and this debt due from F. H. Clark & Co., were situated in Memphis at the time of his death. Goodloe inventoried them all and took them to Alabama, returned them in his inventory to the probate court, and the court took jurisdiction of them and settled Goodloe's accounts in regard to them, and part of these assets were actually paid to the plaintiff, Semple Ellett, as a distributee.

See record p. 63.

"The defendant then introduced a certified transcript "from the records of the probate court of Lawrence "county, Alabama, showing William Goodloe's inventory "of the intestate's effects filed with the court, said inven- "tory exhibiting $3,455.20, received from the defendant "by said Goodloe as administrator, and showing the same "was accounted in his settlement with the court."

See record p. 63.
See Goodloe's deposition, p. 62-63.
See Semple Ellett's deposition, p. 41.

The eighth instruction should have been given, as the record showed the facts proved by uncontradicted record evidence.

See record p. 62–63, 41.

This eighth instruction is in these words: "Especially is the seventh instruction the law, as the Alabama probate court of Lawrence county took cognizance and jurisdiction of the assets after they were transferred there, inventoried in that court, and that court actually distributed a portion of them to the distributees, including the present plaintiff, under the laws of Alabama."

The court erred in not giving the following instruction. The ninth instruction is in these words:

"The present plaintiff is estopped to deny Alabama to be the domicile of the decedent, Quarles, because he, the plaintiff, with a full knowledge of the fact of their transfer by Goodloe, the Alabama administrator, from Tennessee to Alabama, under his Alabama letters of administration, participated in a distribution of a part of the Tennessee assets, and had the Tennessee assets turned over by Goodloe to the Alabama administrator de bonis non, on Goodloe's resignation."

The court erred in not giving the following instruction, which was in these words:

"If the testimony proves there are no creditors of Thomas N. Quarles, deceased, either in Tennessee or Alabama, and none of the distributees reside in either of said States, and the defendant paid over the money sued for, to the Alabama administrator, on a showing of proper letters of administration from the probate court of Lawrence county,

in the State of Alabama, this would make Goodloe, the administrator of Alabama, and the sureties on his administration bond, liable to the distributees for the money collected of defendant, as well as for the other assets collected by Goodloe, in Tennessee, and therefore, the payment by defendant to Goodloe, as proved, was a proper payment, and discharged defendant, without reference to the question of domicile."

The court erred in not giving the following instruction:

"If this suit, in its final issue, fix the domicile of the decedent, Quarles in Lawrence county, Alabama, then Wm. Goodloe, as administrator, and his sureties on his administration bond, would be liable to the plaintiff, Semple Ellett, and the other distributees of the estate of Thomas N. Quarles, deceased, for the money paid Goodloe, as such administrator, by defendant Wilkins."

By section 2162, of the Code of Alabama, of 1867, reenacting section 1814, of the former Code, it is provided, that, "When administration is taken out in Alabama, on the estate of any person, who, at the time of his death, was an inhabitant of any other State or country, his personal estate, after the payment of his debts, and charges on the estate, must be disposed of according to his last will, if probated in this State; and if no such will is probated, *according to the law of the State or country of which he was an inhabitant.*"

And by section 2164, "the residue of the personal estate may be distributed and disposed of according to the provisions of the preceding section; or it may be transmitted

or paid over to the executor or administrator of the State or country where the deceased had his domicile."

See Code of Alabama, of 1867, p. 456.

And now, as the probate court of Lawrence county, Alabama, took jurisdiction of these assets collected in Tennessee by Goodloe, and taken to Alabama, and held him accountable for them, and distributed part of them to the plaintiff, Ellett, as a distributee, it is *res adjudicata*, and estops the plaintiff from maintaining this suit.

A decree of a probate court in Alabama, in regard to a settlement, is conclusive.

Tarver v. Tankersley, 51 Ala. R. 309.
Cecil v. Cecil, 19 Md. R. 79.
Wells' Res Adjudicata, secs. 425–426, pp. 339–340.

The decrees of the court of probate are also conclusive, when acting within its jurisdiction, upon all persons.

Lawrence v. Englesby, 24 Vt. R. 42.
Farrar v. Amstead, 24 Vt. R. 123.
Stern v. Bennett, 24 Vt. R. 303.
Loring v. Steinman, 1 Met. R. 204.
Bigelow on Estoppel, pp. 145–6.

The plaintiff below, Semple Ellett, was, as next of kin of Quarles, entitled to one-third of the estate under the laws of Alabama. Knowing his rights as distributee, he appeared in the probate court of Lawrence county, Alabama, and sought Goodloe's removal, and to have him account; and, on the resignation of Goodloe, and the appointment of Masterson as administrator de bonis non, Semple Ellett bought from Masterson, as administrator, a part of the effects turned over by Goodloe, and which he had taken

from Tennessee, and gave Masterson a receipt for the same as a distributee.

See pages 41 and 62–3.

This was an election to treat the probate court of Lawrence county, Alabama, as rightfully administering the assets taken from Tennessee by Goodloe under his Alabama administration, and this determines his election, and estops him to deny the correctness of the payment by Wilkins to Goodloe.

Bigelow on Estoppels, pp. 503 to 509.

Pool v. Harrison, 18 Ala. R. 514.

The court erred in giving the following instruction, which was duly excepted to. The erroneous instruction was as follows, viz:

"An eminent English judge, Dr. Lushington, has said "that although so many powerful minds have been applied "to the question, there is no universally agreed definition "of the term, no agreed enumeration of the ingredients "which constitute domicile."

It was excepted to and it is an error, because its only effect on the minds of the jury was to confuse and mislead, and because it is not correct. This court, in Mitchell v. United States, 21 Wallace R. pp. 352–353, have defined domicile to be "residence at a particular place, accompanied with an intention to remain there." The ingredients are "residence in the new locality, with an intention to change the prior domicile for the new one."

In 8 Cranch R. p. 278, 3 Curtis R. 121, this court distinguished between mere residence and domicile as follows: "The former is a temporary residence in a foreign country

"for a special purpose, but *domicile is a residence, accompa-*
"*nied with an intention to make it a permanent place of*
"*abode.*"

Again in the same case, 3 Curtis R. p. 131, 8 Cranch R. 290, in the opinion delivered by Chief Justice Marshall, it is held:

"The domicile is *the habitation fixed in any place, with an*
"*intention of always staying there.* A man does not then estab-
"lish his domicile in any place, *unless he makes sufficiently*
"*known his intention of fixing there*, either tacitly or by an
"express declaration. *In this sense he who stops, even for a long*
"*time, in a place for the management of his affairs, has only*
"*a simple habitation there, but has no domicile.*"

"*A domicile then, requires not only actual residence in a*
"*foreign country, but an intention of always staying there.*"

The second paragraph of the charge was excepted to, and is erroneous. It is in the words following: "Our own adjudged cases sufficiently establish the rule, that one who is residing in a place with the purpose of remaining there for an indefinite period of time, and without retaining and keeping up any *animus revertendi* or intention to return to the former home which he has abandoned, will have his domicile in the place of his actual residence."

The error consists in making a change of domicile depend simply *on a change of residence to a new place* and *a purpose of remaining there an indefinite time*; it leaves out the elements of whether such residence was for a *temporary* or *permanent purpose*, and of a *clear, fixed* and *manifest purpose not to remain there as a home.*

In 4 Humphrey's R. p. 348, Foster v. Hall, the court says: "Domicile is a term of more extensive signification than residence, for to constitute a domicile two things must concur. First, residence; secondly, *the intention of making it the home of the party.*"

In Allen v. Thomason, 11 Hum. R. 537 the court hold: "By domicile, two things are implied; the residence of "the person and *the intention of making it the home.*"

In Knox v. Waldoborough, 3 Maine R. 457, the court held: "Long and indefinite absence from home to labor or for business does not change the domicile without proof of the *animi manendi. The animus revertendi is presumed to continue, if he went merely for business purposes.*"

The court also erred in giving the next instruction, which is in these words:

"It requires a greater amount of proof to show that a man intends to expatriate himself and become a foreigner, than that he intends to remove from one State to another in this union of States, and still less that he intends to remove from one place to another in the same State."

Domicile depends on actual residence and the intention to make the place of residence the permanent home, and has no necessary relation to expatriation. The same proof which would show a change of domicile from Alabama to Tennessee, would establish such change from Alabama to England. The nationality of a person and the domicile, are wholly distinct; the latter refers to the personal status, and may be fixed or changed without affecting the former.

Wharton's Conflict of Laws, sec. 8.

Brown v. White, 1 Wallace Jr. R. 217.

The next instruction is erroneous; it declares that: "The term domicile is of more extensive signification than residence, for to constitute domicile, two things must concur: first, residence, and secondly, the intention of making it the home of the party. But this distinction between residence and domicile, has generally been applied rather to political questions, or those involving considerations of a man's national character as a citizen of one country or another. In this sense Vattel defines it thus: 'The domicile is the habitation fixed in any place with an intention of always staying there.' Says the Supreme Court of Tennessee, in a cause construing our attachment laws: 'In this sense, he who stops, even for a long time, in a place for the management of his affairs, has only a simple habitance there, but has no domicile.' This is national domicile in the sense of the public law by which the national character of the person and the right of succession to movable property are determined. But when used in connection with subjects of domestic policy, as taxation, settlement, voting, and the attachment law, the term domicile, has a more confined and restricted import, and implies the same as residence; that is, the home or habitation fixed in any place without a present intention of removing therefrom."

This instruction took away from the jury absolutely the defense of the plaintiff in error, and left only one question of fact to the jury, and that, too, a question of fact not disputed, to-wit: that Quarles had resided at Memphis for several years immediately preceding his death. This instruction plainly declares, that the distinction between residence and domicile, whereby there is required, to constitute domicile, first, residence at the place, and secondly,

intention to make it the home of the party, only applies to political questions involving one's national status; but that in reference to the personal or civil status, and domestic question, domicile has a more confined and restricted import, and *implies the same as residence.*"

This error of the court is plain, manifest, and radical. One's nationality is wholly distinct from the question of domicile, and not controlled by it.

"Nationality, in the United States, fixes only the political status; but the civil status is determined by what State the person is domiciled in."

Wharton's Conflt. Laws, sec. 8, p. 24.

"The nationality of a citizen of the United States, determines nothing as to his personal status; his only nationality is that of the United States, and the United States Government while determining his political status, does not determine his personal status. To get at the personal status, we have to inquire in what State he is domiciled."

Wharton's Conflt. Laws, sec. 8, pp. 21–22.

"Nationality, not being the standard of personal law among ourselves, we do not make it the standard of personal law of foreigners who visit our shores. We inquire, what is their domicile? And by that domicile their personal law is determined."

Wharton's Conflt. Laws, sec. 8, p. 24.

"Foreigners, who have settled in one of the States of the Union and declared their intention to be naturalized, are not citizens of the United States, yet they are plainly domiciled in the State where they have taken up their permanent abode."

Wharton's Conflt. Laws, sec. 8, p. 26.

Murray v. Schooner Charming Betsey, 2 Cranch R. 120.

In the case now before the court, there was no contest as to the residence or habitancy of Quarles; all the proof of both parties showed he had resided at Memphis, as a clerk of F. H. Clark & Co., from 1856 to 1865. Our contention was that he came to Memphis for a temporary purpose, with a fixed intent not to change his domicile from Alabama; that he kept up this intention of regarding Alabama as his home; that for this reason, he refused to register as a voter in Tennessee, and refused to vote, always claiming Alabama as his home; the mere residence in Tennessee for nine to ten years, was a conceded fact. This instruction, therefore, was equivalent to telling the jury to find against the defendant below, since it told them that domicile imported and implied the same as residence.

Exception 24th to the charge of the court involves the same causes and reasons as the seventh, eighth, fourteenth, fifteenth and sixteenth instructions asked by defendant below, and need not be discussed again.

The exceptions, 25 to 34 inclusive, to the charge of the court, have the reasons on which they are based fully set forth in the assignment of errors in this brief, and therefore need not be repeated.

POSTON & POSTON,
W. Y. C. & L. W. HUMES,
For Plaintiff in Error.

108-256

OFFICE SUPREME COURT U. S.
FILED
JAN 29 1883
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES,

NO. 180.

JAMES S. WILKINS,

PLAINTIFF IN ERROR,

VS.

SEMPLE ELLETT,

ADMINISTRATOR OF T. N. QUARLES, DECEASED.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

R. T. McNEAL,
METCALF & WALKER,
Counsel for Defendant in Error.

MEMPHIS, TENN.
Jones, Huhn & Co., Printers and Binders, 12 Jefferson Street.
1883.

SUPREME COURT OF THE UNITED STATES.

JAMES S. WILKINS,
Plaintiff in Error,

VS. { No. 180.

SEMPLE ELLETT,
ADMINISTRATOR OF T. N. QUARLES, DECEASED.

In Error to the Circuit Court of the United States, for the Western District of Tennessee.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

This action was brought in the Circuit Court for the Western District of Tennessee in 1866, by Semple Ellett, defendant in error, as administrator of Thomas N. Quarles, deceased, to recover of James S. Wilkins, plaintiff in error, as surviving partner of F. H. Clark & Co., of Memphis, a debt of about $3,500, due from them to Quarles at the time of his death. The defendant below—plaintiff here—pleaded a discharge by payment in full to one Goodloe, administrator of decedent's estate, appointed in the State of Alabama. The plea also alleges that Quarles was domiciled in Alabama at the time of his death.

It is not disputed that decedent resided and did business in Memphis for a period of twelve to fifteen years next previous to his death in January, 1866, having gone there prior to 1854 from Alabama. Early in that month he went to his cousin's, in Alabama, on a visit, and a few days after his arrival was shot and killed by Goodloe, her husband, who immediately

took out letters of administration in Alabama, and proceeded to Memphis and received of the plaintiff in error the amount due Quarles, less a few hundred dollars paid by Wilkins to two or three persons who claimed to have claims against the estate there.

It may be proper to state that the case has been twice tried, and judgment as often given for defendant in error. The first judgment, rendered in 1867, was reversed in this court, on the ground that the court below erroneously instructed the jury that the payment to Goodloe, the Alabama administrator, was no defense to an action by the Tennessee administrator, no matter where decedent was domiciled; this court holding that if Quarles was domiciled in Alabama the payment was a defense, provided there were no creditors or distributees in Tennessee (9 Wall. 740). For the purpose of the argument, it was assumed in this court that the domicile was in Alabama, and necessarily so, in order that defendant below, in prosecuting his writ, should have the benefit of his exceptions; and this court based its decision on that assumption. It is not true, as asserted in the brief for defendant in error, that, "in the case as then presented, the domicile of Quarles was *established* in Alabama." In the view then taken by the trial court, the question of domicile was immaterial, was not submitted to, and could not have been passed upon, by the jury. On the argument, the defendant in error submitted his case almost wholly on the proposition, or under the belief, that the Supreme Court of Tennessee having on several occasions declared payments made in that State by resident debtors to foreign administrators void, for want of authority on the part of such administrators, this court would follow those decisions, whatever the rule might be elsewhere. It is needless to say more than that these views were not assented to, and the judgment was reversed for the reasons indicated. Of course, the views of this court have been accepted as the law and followed in all subsequent proceedings in the case, both by counsel and the court below.

It may be fairly stated that the only controverted question

of fact presented to the jury on the last trial below was the *intention* with which Quarles went to and so long resided in Memphis. The testimony bearing on that issue was fairly submitted to the jury by the court, in a charge of remarkable clearness as to the law of domicile, and they found the decedent to have been domiciled in Tennessee at the time of his death. Judgment was accordingly given for the plaintiff below, and the defendant prosecutes this second writ of error.

BRIEF AND ARGUMENT.

Domicile, for the purposes of succession, is residence at a particular place with the intention of remaining there an indefinite or unlimited time.

Guier vs. O'Daniel, 1 Binn, 349.
Lowry vs. Bradley, 1 Speers' Eq., 1.
S. C. 39, Am. Dec., 142.
Mitchell vs. United States, 21 Wall., 353.
Ennis vs. Smith, 14 How. (U. S.) 400.

Removal from the present place of domicile to another changes the domicile, unless it appear from circumstances or positive proof that the removal is for a temporary purpose.

Ennis vs. Smith, 14 How. (U. S) 400.
Harris vs. Firth, 4 Cranch., C. C. 710;
Anderson vs. Anderson, 42 Vt. 250.
Hampden vs. Levant, 59 Me. 557.

The place of one's residence at the time of his death is presumed in law to be his domicile, and it is incumbent upon him who denies it to repel this presumption by proof.

Guier vs. O'Daniel, 1 Binn, 349.
Note to S. C. 1 Smith's Lead. Cases, 733.
Lowery vs. Bradley, 1 Speers' Eq. 1.
S. C. 39 Am. Dec., 142.
Mitchell vs. United States, 21 Wall., 353.
Shelton vs. Tiffin, 6 How. (U. S.) 163.

Voluntary residence in the prosecution of the ordinary business pursuits of life, long continued at a particular place, is of such controlling influence in questions of domicile that declarations of citizenship elsewhere, or of intention to return to a former place of residence, are of but little weight against the facts of such residence and business engagements.

The Harmony, 2 Rob. Adm., 322.
Note to Guier vs. O'Daniel, 5th Ed., 1 Am. Lead. Cases 896.
Anderson vs. Anderson, 42 Vt., 350.
Hallett et al. vs. Bassett, 100 Mass., 167.
In re Steers, 3 Hurl and Norm., 594.
Gilman vs. Gilman, 52 Me., 165.
Dupuy vs. Wurtz, 53 N. Y., 562.
Hulet vs. Hulet, 37 Vt., 586.
White vs. Brown, 1 Wall. jr., 264.
Shelton vs. Tiffin, 6 How. (U. S.) 163.

Upon the whole record, the court should have directed the jury to find for the plaintff.

Defendant himself, on cross examination, admitted that when Quarles met his death in North Alabama, he was there merely on a visit; that he had lived in Memphis for at least ten years prior to his death; and that *he intended to continue to live in Memphis until he should have made a fortune sufficient to justify him in retiring from business.* (Record, pp 66-67). Proof of that intent was made by other witnesses offered by defendant below (Record, page 68), and is nowhere contradicted.

On the admitted facts, therefore, the decedent's domicile was in Tennessee.

Story's Confl. Laws, §46.
Kellar vs. Baird, 5 Heisk., 39.
Bruce vs. Bruce, 2 Bos. & Pull., 228, and note.
Att'y Gen'l vs. Pottinger, 6 H. and N., 733.
Anderson vs. Anderson, 42 Vt. 350.
Wharton's Confl. Laws, §56.

Hence, if error be found in the charge of the court, such error worked no injury, and there should be no reversal.

Deery vs. Cray, 5 Wall., 795.
Brobst vs. Brock, 10 Wall., 519.
Smiths vs. Shoemaker, 17 Wall., 630.
Decatur Bk. vs. St. Louis Bk., 21 Wall., 294.

The bill of exceptions purports to contain a full transcript of the evidence, but as no exception was taken to the rulings of the court in receiving or excluding testimony it is assumed that this court will inspect or consider that part of the record only so far as is necessary to pass upon the correctness of the charge of the court.

The exceptions to the refusal of the court to instruct the jury as requested by the plaintiff in error, and to the charge given, are so numerous as to embarrass us in an attempt to meet them. Eighteen requests were made, and though the substance of some of them is found in the charge, yet each is made the ground of an exception. A still greater number of objections are made and exceptions taken to the charge as given. All will be briefly noticed, referring first to those grounded upon the refusal of the court to charge the jury as requested.

The first request (Record, page 69) asked the court in substance to charge the jury that it was incumbent on the defendant in error to prove that his intestate left Alabama with the intention of abandoning his domicile there, or that after he went to Memphis he formed this purpose and fixed his domicile in Tennessee—by declarations of such intention as we interpret the request. And this mistaken view, as we think, of the method of proving this important ingredient in the law of domicile is the ground of many of the exceptions to the charge given and refused. The authorities cited herein abundantly show that intention in this class of cases, as in nearly all others, is best shown by acts, and in most cases these are the only indices. This rule grows out of the nature of the fact to be proven, for the purposes of the mind and the secrets of the

heart are, at least in most cases, beyond human ken, except as they may be determined by the acts and conduct. If it were necessary to prove this fact independently of acts, it would, in most cases, be practically impossibe to impress upon almost life-long residence at a place this essential ingredient in domicile; for the great mass of people who change their places of residence do so without any formal declarations as to their intention, which is clearly shown by their acts in removing from one place to another, and there abiding. Therefore, the law presumes that one is domiciled at the place of his actual residence, and where his residence has been long continued and is not for a manifestly temporary purpose, the presumption is almost conclusive; and in all cases, it is incumbent on him who asserts the domicile to be elsewhere, to prove it. Declarations of intention are seldom sought after by courts, except in cases of double residence—where actual residence at two or more places speaks doubtfully or doubly on the question—and then election by intention as shown by statements may prevail.

So much of the second request as contains a proposition of law is found in the charge as given by the court.

The third, fourth, fifth and sixth requests (Rec. p. 70) contain no proposition of law, but are rather arguments—based, too, upon statements of the evidence more favorable to plaintiff in error than the testimony before the jury, and wholly omitting any reference to the documentary and other evidence offered by plaintiff to strengthen and support the presumption arising from an actual residence of from twelve to fifteen years in Tennessee. They were therefore properly refused. Certainly the fact recited in the fifth request, that plaintiff in error took counsel as to the payment of the money to Goodloe, in no way tended to prove Quarles' intention in going to or remaining at Memphis.

The seventh request (Rec. p. 71) contains the proposition that an ancillary administrator may lawfully go into a foreign jurisdiction and the domicile of a decedent, and collect and discharge a debt there due to such decedent. The general rule is, that an administrator appointed in one juris-

diction can do no valid act in another, nor can he be held to account under another. This court has held, however, that the administrator appointed in the domicile of the decedent, under whose laws his estate must finally be distributed and fully administered, may go into a foreign jurisdiction and there collect a debt, provided there be no creditors or distributees residing there. This is the utmost extent to which the authority of an administrator appointed in one jurisdiction has been extended in another. And this has been done, we suppose, on the ground that in such a case the identical debt would be collected and transmitted entire to the domicile of the decedent by the Probate Court of such foreign jurisdiction. But certainly it would be in violation of every principle of law governing the succession to and administration of personal property, to allow an ancillary administrator to enter the domicile of the decedent and carry off his personal property, beyond the control and jurisdiction of the only tribunals clothed with authority to make full administration and final distribution. We apprehend no authority can be found for such a proceeding, and none need be cited against it.

The eighth and ninth requests are based upon an assumed and disputed state of facts; but if the facts were as stated, there could be no estoppel, for this can only occur where the alleged act or declaration has induced the person complaining of it to do something he otherwise would not have done. Nor can an act or declaration by one, acting or speaking in his own right, estop him when suing or defending in a representative capacity.

The tenth request (Rec. p. 71) was properly refused, because it makes "actual" intention to permanently reside in a place requisite to domicile. Without determining how strong a purpose "actual" intention indicates—whether it adds anything not recognized by law as essential to domicile—it is quite certain, we think, on authority and reason, that if a man leave one place and locate in another with the intention to make such other place his permanent or fixed abode, or to remain there indefinitely, he acquires a domicile there. In this coun-

try, where a single government extends over a vast expanse of territory of almost infinite variety of climate and productions, and a population restless and migratory in their habits and tastes, it can be said of comparatively few people that they intend to remain always at their present places of abode. And State lines are no such barriers to this migratory disposition as are the national boundaries.

The eleventh request was substantially given when the court told the jury that "mere absence from a fixed home, however long continued, cannot work the change," without the intention to remain at the new place of residence. (Rec. p. 81).

The twelfth request is subject to the same criticism as the third, and others noticed with it, and also to the objection that it embodies the proposition that if Quarles, at some time during his long residence at Memphis, declared his citizenship to be in Alabama, his domicile would thereby be fixed there. It will probably not be denied that if he went to Memphis with the intention of making that place his home, or, after going there, formed such purpose, Memphis *eo instanti* became his domicile; and no subsequent change of purpose could affect the question, unless it was followed by actual removal to Alabama. The declarations alleged to have been made, and recited in the request, were not made till long after he went to Memphis, and most of them till after or about the close of the war.

The thirteenth request (Rec. p. 72) was properly refused, because there was no such evidence before the jury as it recites. There was not only no testimony tending to prove that Quarles went to Alabama to reside on the occasion of his death, or that he left at the end of his year, or that he was to be gone an indefinite time, but the reverse of all these was clearly shown.

The conditions upon which the fourteenth request is based is not shown to exist; but rather the contrary. The testimony of plaintiff in error itself proved that there were creditors in Tennessee, and that he himself paid them at and before making the payments he pleads to Goodloe. As to whether there were distributees in Tennessee there was no testimony.

But the request also declares that, even if Quarles was domiciled in Tennessee, the payment to Goodloe was good, because the sureties on his bond in Alabama would be liable to the distributees for the money received by him of the plaintiff in error. If the alleged payment to Goodloe discharged the debt, it was because Goodloe had authority to receive it, and his authority in no way depended upon his bonds in Alabama. But if it were a pertinent matter for discussion, we should deny that Goodloe's sureties in Alabama are liable for money collected in Tennessee without authority. If this method of instructing a jury be proper, then it would have been pertinent for the defendant in error to prove on the trial that Goodloe had squandered the money received from plaintiff in error, and that he had given straw bonds. Such testimony would undoubtedly have been objected to by counsel and ruled out by the court.

The fifteenth, sixteenth and seventeenth requests submit no proposition of law, but appeal to the jury for a verdict on other grounds than the testimony before them, and were therefore properly refused.

The testimony referred to in the eighteenth request (Rec. p. 73)—the assessing of poll taxes against Quarles and their payment by him—was received without objection, and tended to prove the issue. The terms "inhabitant", "resident" and "citizen" are usually used interchangably in statutes, except in those providing for proceedings in attachment against the property of non-residents. (*Walnut vs. Wade*, 103 *U. S. Rep.*, 683. *Lyman vs. Fisk*, 17 *Pick.*, 231. *S. C.* 28 *Am. Dec.*, 29, *and note*). It is not usual to exact poll taxes except where the subject of them possesses and may exercise the rights and privileges of citizenship.

Many of the objections to the charge are but repetitions of the grounds of exception to the court's refusal to charge as requested, and therefore need not be so fully noticed.

The fact that the court told the jury, as a matter of history, that an eminent English judge had said there was no universally agreed definition of domicile (Rec. p. 73), to which excep-

tion is taken, could not have confused the jury in the light of the simple and clear statement of what our own courts have held on the subject, immediately following it. But this statement is itself excepted to, on the ground that it makes a change of domicile complete on a change of residence to a new place with the purpose of remaining for an indefinite time, overlooking or omitting to notice the other clause of the sentence: "and without retaining and keeping up any *animus revertendi*," &c. The objection is made, too, that the statement unwarrantably draws a distinction between national domicile and one within the same sovereignty. We think the authorities clearly make such a distinction, but whether they do or not, if the law was properly given the jury as to what constitutes domicile in this case, plaintiff in error could not be prejudiced by improperly directing them as to what the law would be in another case not before them. The same answer may be made to the third exception (Rec. p. 74), which objects to the explanation the court makes, that it is not so much a difference in the elements of domicile in the two classes of cases as to the quantum of proof required.

The ground of the fourth exception to the charge is, that the definitions given of domicile and residence make the term domicile, as applicable to this case, synonymous with residence. We submit that an examination of the language used by the court will demonstrate that the ground of the exception is not in the charge. The cases in which domicile is used in the sense of residence or habitancy expressly exclude the present case, and this restricted sense of the term is contrasted instead of confounded with that in which it is used to designate one's nationality or the right of succession to property.

We find no such language in the charge as the fifth exception is directed against. (Record, p. 75.)

The sixth exception is a protest against the definition of domicile, as laid down by this court, for the language used in the charge is manifestly taken from the opinion of the court in *Mitchell vs. United States*, 21 *Wall.*, 353. The proposition contained in the reasons for the exception—that residence in

Tennessee, however long, coupled with the determination to retain his domicile in Alabama would not work a change of Quarles' domicile to Tennessee—might be assented to, and yet the question would remain, how and by whom shall this purpose as to Alabama be shown? Certainly, the law puts this burden on the plaintiff in error as does the charge of the court. Under the admitted fact of the case—long-continued residence in Tennessee—the law makes a *prima facie* case for the defendant in error, and casts the burden of overcoming this presumption on the plaintiff in error, and this is all the court tells the jury when it is stated that they have a starting point in the fact of the residence of Quarles in Tennessee, and the presumption of law that he was domiciled where he resided at the time of his death. When the jury are told "there can be no doubt, if you resolve the somewhat contested fact of Quarles' intention to return to Memphis after his trip to Alabama, during which he was killed, in favor of Tennessee," the manifest meaning is that the jury in that case start without any doubt that Tennessee was, *prima facie*, the domicile of the decedent, and not, as is complained, that there can be no doubt as to where, under all the proof, the domicile should be declared to be. The question to which the attention of the jury is directed in this part of the charge is the burden of proof, and it properly places it on the plaintiff in error to show, under the undisputed facts, that decedent was domiciled in Alabama.

The seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth exceptions to the charge (Record, pp. 76 and 77) are sufficiently met by the foregoing suggestions, we think. Attention, however, is directed to the fact that the words "from the proof offered," are omitted from quotation made from the charge, and which is made the ground of the eleventh exception. It is objected, too, that the jury are told that the defendant must prove to their satisfaction, instead of by a preponderance of the proof, that Quarles was domiciled in Alabama. This form of expression prevails in some of the State courts, but we know of no rule of practice in the Federal courts requiring any particular form of expression in directing juries as to the

quantity of evidence to justify a verdict, and we assume that a direction to be satisfied of a fact from the evidence is sufficient. We see no substantial difference between this and the finding upon a preponderance, for a preponderance ought to and does satisfy, and nothing less will. It is noticeable that in no one of the eighteen requests made by plaintiff in error is the jury directed to find from the preponderance of the testimony. We suppose, however, they could have been properly instructed without the use of any expression indicating a nice balancing of the testimony, and they are subsequently told that they "are to find the fact," without stating the quantity of evidence. (Record, p. 79.) The fourteenth exception (Record, p. 77) is that the language excepted to directed the attention of the jury to only a few unimportant circumstances, omitting to mention others of great comparative importance, and that the jury are told to determine whether these made a residence elsewhere than Alabama necessary or desirable. Both reasons for the exception, we think, are based upon a misconception of the scope of the portion of the charge objected to. The court is directing attention to the inferences this court had held might be drawn from the condition and circumstances of a person at the supposed abandoned domicile, and the court therefore submits to the jury the question whether or not in this case these conditions were such as to make a residence elsewhere than Alabama necessary or desirable, which is but another mode of submitting the question whether Quarles probably left Alabama with the intention of returning there. There was no reference in this part of the charge to what was done or said in Tennessee after Quarles went there, and the whole case of plaintiff in error rests upon declarations claimed to have been made long after going to Memphis, and not when he left Alabama.

The fifteenth exception to the charge (Record, p. 78,) is directed against the proposition that change of domicile does not depend so much upon the intention to remain at the new place as upon its being without an intention to return to the old.

The language objected to is quoted from a decision by the Supreme Court of Massachusetts in *Hallett et al vs. Bassett*, 100 *Mass. Rep.*, 167, which will probably need no defense in this court. But if the proposition be erroneous it was more to the prejudice of defendant in error than the plaintiff, for the reason that the only testimony offered by the latter was alleged declarations by decedent tending to prove that he had the intention to return to Alabama.

The declaration by the court to the jury that acts speak louder than words when weighed with the declarations proven in this case, is its own defense against the sixteenth exception. (Record, p. 78.) If not, it is abundantly supported by authorities elsewhere cited.

The seventeenth exception is directed against that portion of the charge which directs the jury that the right of election by expressed intention cannot prevail over actual residence by a floating intention to return at some future time—that it "must be more definite and amount to an actual purpose kept up and never abandoned, and not inconsistent with the conduct and acts, or other intentions manifested by acts and conduct, or inconsistent declarations." That this is the law appears upon the authority of several adjudicated cases elsewhere cited; and it is particularly applicable to the testimony in this case, to which it was directed.

The exception to this clause of the charge treats it as leaving to the jury the simple function of "deciding against defendant " if they found acts, conduct or declarations inconsistent with " the uniform expressed election to retain the former domicile." Such inconsistent declarations would certainly break the "uniformity" of the alleged "expressed election." But the exception is based on a misreading of the charge. The inconsistency referred to is not the inconsistency with other declarations merely, but with other *intentions*, manifested by acts and conduct, or declarations. That the motive, the intent, is the ultimate point for determination, is plainly told to the jury; and this is explained and enforced in the sen-

tences immediately following, the one commencing "The result is," &c., being a literal quotation from the language of this court in Ennis vs. Smith (14 How., 423). Other authorities in support of the charge are cited on its margin, as printed in the record, and we have not thought it necessary again to cite them.

R. T. McNEAL,
METCALF & WALKER,
For Defendant in Error.